

**LAWS AND RESOLUTIONS
OF THE STATE OF MONTANA**

Enacted by the

**FIFTY-EIGHTH LEGISLATURE
IN REGULAR SESSION**

**Held at Helena, the Seat of Government
January 6, 2003, through April 26, 2003**

and the

**FIFTY-SEVENTH LEGISLATURE
IN SPECIAL SESSION**

**Held at Helena, the Seat of Government
August 5, 2002, through August 10, 2002**

and

**Held at Helena, the Seat of Government
September 13, 2002**

**Published and distributed by
Montana Legislative Services Division
Capitol Bldg Rm 110
1301 E 6th Ave
PO Box 201706
Helena MT 59620-1706
<http://leg.mt.gov>**

**Lois Menzies
Executive Director**

**Printed and bound by
West Group
610 Opperman Dr
Eagan MN 55123**

Table of Contents

Volume I

Officers and Members of the Montana Senate
Officers and Members of the Montana House of Representatives
Title Contents of Bills and Resolutions
Chapters 1 - 299

Volume II

Chapters 300 - 552

Volume III

Chapters 553 - 612
House Joint Resolutions
House Resolutions
Senate Joint Resolutions
Senate Resolutions
Ballot Issues
Index to Appropriations
General Index
Tables
Code Sections Affected
Session Laws Affected
Senate Bill to Chapter Number
House Bill to Chapter Number
Chapter Number to Bill Number
Effective Dates By Chapter Number
Effective Dates By Date
Session Law to Code
2002 Ballot Issues
August 2002 Special Session Material
September 2002 Special Session Material

Volume I

Officers and Members of the Montana Senate	
Officers and Members of the Montana House of Representatives	
Title Contents of Bills and Resolutions	
House and Senate Bills.....	i
House Joint Resolutions	cviii
House Resolutions	cxii
Senate Joint Resolutions	cxii
Senate Resolutions	cxv
Chapters 1 - 299.....	3

**OFFICERS AND MEMBERS
OF THE MONTANA SENATE
2003**

50 Members

29 Republicans

21 Democrats

OFFICERS

President Bob Keenan
 President Pro Tempore Walt McNutt
 Majority Leader Fred Thomas
 Majority Whip Corey Stapleton
 Minority Leader Jon Tester
 Minority Whip Jon Ellingson
 Secretary of the Senate Rosana Skelton

MEMBERS

Name	Preferred Mailing Address	Dist No	Party
Anderson, Sherm	PO Box 311, Deer Lodge MT 59722-0311	28	R
Bales, Keith	HC 39 Box 33, Otter MT 59062-9703	1	R
Barkus, Gregory	PO Box 2647, Kalispell MT 59903-2467	39	R
Black, Jerry	445 O'hare Blvd, Shelby MT 59474-1950	44	R
Bohlinger, John	2712 Virginia Ln, Billings MT 59102-1037	7	R
Butcher, Edward	PO Box 89, Winifred MT 59489-0089	47	R
Cobb, John	PO Box 388, Augusta MT 59410-0388	25	R
Cocchiarella, Vicki	535 Livingston Ave, Missoula MT 59801-8003	32	D
Cooney, Mike	713 Pyrite Ct, Helena MT 59601-5877	26	D
Cromley, Brent	PO Box 2545, Billings MT 59103-2545	9	D
Curtiss, Aubyn	PO Box 216, Fortine MT 59918-0216	41	R
Depratu, Robert	PO Box 1217, Whitefish MT 59937-1217	40	R
Ellingson, Jon	141 N Ave E, Missoula MT 59801-6011	33	D
Elliott, Jim	100 Trout Creek Rd, Trout Creek MT 59874-9609	36	D
Esp, John	PO Box 1024, Big Timber MT 59011-1024	13	R
Gebhardt, Kelly	PO Box 724, Roundup MT 59072-0724	4	R
Glaser, William	1402 Indian Creek Rd, Huntley MT 59037	8	R
Grimes, Duane	4 Hole in the Wall, Clancy MT 59634-9516	20	R
Hansen, Ken	PO Box 686, Harlem MT 59526-0686	46	D
Harrington, Dan	1201 N Excelsior Ave, Butte MT 59701-8505	19	D
Johnson, Royal	2915 Illinois St, Billings MT 59102-0814	5	R
Keenan, Bob	PO Box 697, Bigfork MT 59911-0697	38	R
Kitzenberg, Sam	130 Bonnie St Apt 1, Glasgow MT 59230-2101	48	R
Laible, Rick	529 Moose Hollow Rd, Victor MT 59875-9303	30	R
Mahlum, Dale	10955 Us Highway 93 N, Missoula MT 59808-9227	35	R
Mangan, Jeff	1223 7th Ave N, Great Falls MT 59401-1613	23	D
McCarthy, Bea	1906 Ogden St, Anaconda MT 59711-1706	29	D
McGee, Daniel	1925 Pinyon Dr, Laurel MT 59044-9381	11	R
McNutt, Walter	110 12th Ave SW, Sidney MT 59270-3614	50	R
Nelson, Linda	469 Griffin Rd, Medicine Lake MT 59247-9708	49	D
O'Neil, Jerry	985 Walsh Rd, Columbia Falls MT 59912-9044	42	R
Pease, Gerald	PO Box 556, Lodge Grass MT 59050-0556	3	D
Perry, Gary	3325 Cedar Meadow Ln, Manhattan MT 59741	16	R
Roush, Glenn	PO Box 185, Cut Bank MT 59427-0185	43	D
Ryan, Don	2101 7th Ave S, Great Falls MT 59405-2821	22	D
Schmidt, Trudi	4029 6th Ave S, Great Falls MT 59405-3746	21	D

Shea, Debbie	100 Moon Ln, Butte MT 59701-3975	18	D
Sprague, Mike	174 Erickson Ct S, Bill ings MT 59105-2347	6	R
Squires, Carolyn	2111 S 10th St W, Missoula MT 59801-3412	34	D
Stapleton, Corey	3614 Crater Lake Ave, Bill ings MT 59102-7732	10	R
Stonington, Em ily	15042 Kelly Can yon Rd, Bozeman MT 59715-9625	15	D
Story, Robert	133 Val ley Creek Rd, Park City MT 59063-8040	12	R
Tash, Bill	240 Vista Dr, Dillon MT 59725-3111	17	R
Taylor, Mike	PO Box 152, Proc tor MT 59929-0152	37	R
Tester, Jon	709 Son Ln, Big Sandy MT 59520-8443	45	D
Thomas, Fred	3566 Holly Ln, Stevensville MT 59870-6634	31	R
Toole, Ken	PO Box 1462, Hel ena MT 59624-1462	27	D
Tropila, Jo seph	209 2nd St NW, Great Falls MT 59404-1301	24	D
Wheat, Michael	930 Stonegate Dr, Bozeman MT 59715-2109	14	D
Zook, Tom	HC 40 Box 6591, Miles City MT 59301-9806	2	R

**OFFICERS AND MEMBERS
OF THE MONTANA HOUSE OF REPRESENTATIVES
2003**

100 Members

53 Republicans

47 Democrats

OFFICERS

Speaker Doug Mood
 Speaker Pro Tempore Jeff Laszloffy
 Majority Leader Roy Brown
 Majority Whips..... John Brueggeman, Cindy Younkin
 Minority Leader David Wanzenried
 Minority Whips Tim Dowell, Monica Lindeen
 Chief Clerk of the House Marilyn Miller

MEMBERS

Name	Preferred Mailing Address	Dist No	Party
Andersen, Joan	RR 1 Box 1012, Fromberg MT 59029-9701	23	R
Ballantyne, Norman	PO Box 293, Valier MT 59486-0293	86	D
Balyeat, Joe	6909 Rising Eagle Rd, Bozeman MT 59715-8621	32	R
Barrett, Debby	17600 MT Highway 324, Dillon MT 59725-9657	34	R
Becker, Arlene	1440 Lewis Ave, Billings MT 59102-4240	18	D
Bergren, Bob	1132 26th Ave W, Havre MT 59501-8609	90	D
Bitney, Rod	PO Box 10501, Kalispell MT 59904-0501	77	R
Bixby, Norma	PO Box 1165, Lame Deer MT 59043-1165	5	D
Bookout-Reinicke, Sylvia	PO Box 327, Alberton MT 59820-0327	71	R
Branae, Gary	415 Yellowstone Ave, Billings MT 59101-1730	17	D
Brown, Dee	PO Box 444, Hungry Horse MT 59919-0444	83	R
Brown, Roy	PO Box 22273, Billings MT 59104-2273	14	R
Brueggeman, John	321 Lakeview Dr, Polson MT 59860-9317	74	R
Buzzas, Rosalie	233 University Ave, Missoula MT 59801-4351	65	D
Callahan, Tim	3409 5th Ave S, Great Falls MT 59405-3543	43	D
Carney, Eileen	PO Box 1193, Libby MT 59923-1193	82	D
Clark, Edith	PO Box 34, Sweetgrass MT 59484-0034	88	R
Clark, Paul	20 Fox Ln, Trout Creek MT 59874-9510	72	D
Cohenour, Jill	2610 Colt Dr, East Helena MT 59635-3442	51	D
Cyr, Larry	1260 W Aluminum St, Butte MT 59701-2102	37	D
Devlin, Ronald	PO Box 186, Terry MT 59349-0186	3	R
Dickenson, Sue	620 Riverview Dr E, Great Falls MT 59404-1637	47	D
Dowell, Tim	46 W View Dr, Kalispell MT 59901-3364	78	D
Erickson, Ron	3250 Pattee Canyon Rd, Missoula MT 59803-1703	64	D
Everett, George	1344 Helena Flats Rd, Kalispell MT 59901-6548	84	R
Facey, Tom	418 Plymouth St, Missoula MT 59801-4133	67	D
Fisher, Stanley	76 Golf Terrace Dr, Bigfork MT 59911-6252	75	R
Forrester, Gary	2527 Gardner St # R8, Billings MT 59101-6702	16	D
Franklin, Eve	4021 4th Ave S, Great Falls MT 59405-3633	42	D
Fritz, Nancy Rice	1817 Daniel Dr, Missoula MT 59802-4926	69	D
Fuchs, Daniel	395 Windsor Cir N, Billings MT 59105-2409	15	R
Gallik, Dave	120 E Lyndale Ave, Helena MT 59601-2911	52	D
Gallus, Steve	2319 Harvard Ave, Butte MT 59701-3854	35	D
Galvin-Halcro, Kathleen	101 Riverview Dr E, Great Falls MT 59404-1547	48	D
Gibson, Carol	2518 Broadwater Ave, Billings MT 59102-4608	20	D
Gillan, Kim	750 Judicial Ave, Billings MT 59105-2130	11	D
Golie, George	316 20th Ave S, Great Falls MT 59405-4131	44	D
Gutsche, Gail	1530 Cooper St, Missoula MT 59802-2220	66	D

Haines, Dick	5935 St Fran cis Dr, Missoula MT 59803-2945	63	R
Harris, Christopher	519 N Black Ave, Bozeman MT 59715-3612	30	D
Hawk, Ray	NW 4878 Hoblitt Ln, Flor ence MT 59833-6832	62	R
Hedges, Donald	70 Singletree Rd, An te lope MT 59211	97	R
Hurwitz, Dan	PO Box 585, White Sul phur Springs MT 59645-0585	40	R
Jackson, Verdell	555 Wag ner Ln, Kalispell MT 59901-8079	79	R
Jacobson, Hal	4813 Us High way 12 W, Hel ena MT 59601-9694	54	D
Jayne, Joey	299 Lumpry Rd, Arlee MT 59821-9747	73	D
Jent, Larry	1201 S 3rd, Bozeman MT 59715-5503	29	D
Ju neau, Carol	128 9th Ave SE, Brown ing MT 59417-0055	85	D
Kasten, Dave	HC 77 Box A-14, Brockway MT 59214-9701	99	R
Kaufmann, Chris tine	PO Box 1566, Hel ena MT 59624-1566	53	D
Keane, Jim	2131 Wall St, Butte MT 59701-5527	36	D
Lake, Bob	PO Box 2096, Ham il ton MT 59840-2096	60	R
Lambert, Carol	PO Box 2, Broadus MT 59317-0002	1	R
Lange, Mi chael	208 Fair Park Dr, Bill ings MT 59102-5734	19	R
Laslovich, Jesse	112 Moun tain View St, An a conda MT 59711-1616	57	D
Laszloffy, Jeff	3165 High way 212 S, Lau rel MT 59044-8911	22	R
Lawson, Bob	PO Box 686, Whitefish MT 59937-0686	80	R
Lehman, Larry	PO Box 184, Power MT 59468-0184	87	R
Lenhart, Ralph	PO Box 1225, Glendive MT 59330-1225	2	D
Lewis, Dave	5871 Col lins Rd, Hel ena MT 59602-9584	55	R
Lindeen, Monica	1626 Heath St, Hunt ley MT 59037-9137	7	D
Maedje, Rick	PO Box 447, Fortine MT 59918-0447	81	R
Malcolm, Bruce	2319 High way 89 S, Em i grant MT 59027-6023	25	R
Matthews, Gary	1708 Main St, Miles City MT 59301-3652	4	D
McKenney, Joe	1140 18th Ave SW, Great Falls MT 59404-3426	49	R
Mendenhall, Scott	281 McKeown Ln, Card well MT 59721-9611	39	R
Mood, Doug	PO Box 42, Seeley Lake MT 59868-0042	58	R
Morgan, Penny	3401 Waterloo Cir, Bill ings MT 59101-8000	21	R
Musgrove, John	810 8th St, Havre MT 59501-4127	91	D
Newman, Brad	514 N Henry Ave, Butte MT 59701-8720	38	D
Noennig, Mark	3441 Powderhorn Cir, Bill ings MT 59102-0332	9	R
Olson, Alan	18 Halfbreed Creek Rd, Roundup MT 59072-6524	8	R
Olson, Bernie	161 Lakeside Bou le vard, Lakeside MT 59922-9723	76	R
Parker, John	PO Box 558, Great Falls MT 59403-0558	45	D
Pattison, Jeff	123 Cain Rd, Glas gow MT 59230	95	R
Peterson, Jim	Route 1 Box 2, Buf falo MT 59418-9501	94	R
Raser, Holly	4304 Spurgin Rd, Missoula MT 59804-4520	70	D
Rice, Di ane	PO Box 216, Har ri son MT 59735-0216	33	R
Ripley, Rick	8920 MT High way 200, Wolf Creek MT 59648-8639	50	R
Rob erts, Don	5414 Wal ter Hagen Dr, Bill ings MT 59106-1007	10	R
Rome, Allen	748 Dana Ln, Gar ri son MT 59731-9737	56	R
Ross, Jack	129 N Stillwater Rd, Absarokee MT 59001-6235	24	R
Ryan, Brennan	PO Box 123, Stockett MT 59480-0123	41	D
Sales, Scott	5200 Bostwick Rd, Bozeman MT 59715-7721	27	R
Schrumpf, Clarice	1317 Yel low stone Ave, Bill ings MT 59102-5337	12	R
Shockley, Jim	PO Box 608, Vic tor MT 59875-0608	61	R
Sinrud, John	284 Fron tier Dr, Bozeman MT 59718-7975	31	R
Small-Eastman, Veronica	One Mile South west, Lodge Grass MT 59050-0262	6	D
Smith, Frank	PO Box 729, Pop lar MT 59255-0729	98	D
Steinbeisser, Donald	RR 1 Box 3400, Sid ney MT 59270-9620	100	R
Stoker, Ron	332 N Gold Creek Loop, Ham il ton MT 59840-9730	59	R
Thomas, Bill	HC 81 Box 7, Hob son MT 59452-9701	93	R
Wagman, Pat	202 S 9th St, Livingston MT 59047-2906	26	R
Waitschies, Karl	PO Box A-18, Peer less MT 59253	96	R
Wanzenried, Da vid	903 Sky Dr, Missoula MT 59804-3121	68	D
Weiss, Sandy	PO Box 1173, Bill ings MT 59103-1173	13	D
Wilson, Bill	1305 2nd Ave N, Great Falls MT 59401-3217	46	D
Windy Boy, Jon a than	PO Box 269, Box El der MT 59521-0269	92	D
Witt, John	2555 Rus sell Rd, Carter MT 59420-8230	89	R
Younkin, Cindy	1115 N Spruce Dr, Bozeman MT 59715-5948	28	R

TITLE CONTENTS

HOUSE AND SENATE BILLS

<u>Chapter</u>		<u>Page</u>
1	<i>(House Bill No. 1; Lewis)</i> APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AMENDING SECTION 1, CHAPTER 1, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	3
2	<i>(House Bill No. 21; Smith)</i> DESIGNATING WOLF POINT, MONTANA, AS THE SITE OF THE MONTANA COWBOY HALL OF FAME AND DIRECTING THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF TRANSPORTATION TO IDENTIFY IT AS SUCH ON OFFICIAL STATE MAPS	3
3	<i>(House Bill No. 309; Brown)</i> PROVIDING A POPULATION CRITERION FOR THE REDISTRICTING OF LEGISLATIVE DISTRICTS; PROHIBITING THE SECRETARY OF STATE FROM ACCEPTING A PLAN NOT IN COMPLIANCE WITH CERTAIN CRITERIA; AMENDING SECTION 5-1-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	4
4	<i>(Senate Bill No. 258; Thomas)</i> PROVIDING FOR THE ASSIGNMENT OF HOLDOVER SENATORS TO NEW DISTRICTS FOR THE REMAINDER OF THEIR TERMS IN THE SESSION DURING WHICH THE LEGISLATIVE REDISTRICTING PLAN IS SUBMITTED TO THE LEGISLATURE FOR RECOMMENDATIONS; PROHIBITING THE DISTRICTING AND APPORTIONMENT COMMISSION FROM ASSIGNING HOLDOVER SENATORS TO NEW DISTRICTS; PROVIDING FOR THE ASSIGNMENT OF HOLDOVER SENATORS TO DISTRICTS BY JOINT RESOLUTION; PROVIDING THAT THE ASSIGNMENT OF A HOLDOVER SENATOR BE BASED UPON THE GREATEST PERCENTAGE OF POPULATION IN THE NEW DISTRICT THAT VOTED FOR THE SENATOR IN THE PRIOR ELECTION AND THE SENATOR'S RESIDENCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	5
5	<i>(House Bill No. 188; Devlin)</i> CREATING A TRESPASS EXCEPTION FOR DEPARTMENT OF REVENUE PROPERTY VALUATION EMPLOYEES ACTING WITHIN THE COURSE AND SCOPE OF THEIR DUTIES; REQUIRING THAT THE DEPARTMENT PUBLISH NOTICE OF INTENT TO ENTER ONTO PROPERTY FOR APPRAISAL AND AUDIT PURPOSES; REQUIRING THAT THE DEPARTMENT MAIL A ONE-TIME NOTICE TO OWNERS OF PRIVATE POSTED LAND THAT DEPARTMENT EMPLOYEES MAY ENTER THE PROPERTY FOR APPRAISAL AND AUDIT PURPOSES; REQUIRING THAT COUNTY TREASURERS ANNUALLY PROVIDE NOTICE TO LANDOWNERS THAT DEPARTMENT EMPLOYEES MAY ENTER PRIVATE LAND FOR APPRAISAL AND AUDIT PURPOSES; PROVIDING THAT PROPERTY VALUATION EMPLOYEES MAY ENTER PROPERTY UNDER SPECIFIC GUIDELINES; ALLOWING THE LANDOWNER TO REQUIRE THAT THE LANDOWNER OR LANDOWNER'S AGENT BE PRESENT WHEN DEPARTMENT EMPLOYEES ENTER THE LANDOWNER'S PROPERTY; ALLOWING THE DEPARTMENT TO ESTIMATE THE VALUE OF PROPERTY WHEN ACCESS IS DENIED; PROHIBITING, UNDER CERTAIN CONDITIONS, A COUNTY TAX	

APPEAL BOARD AND THE STATE TAX APPEAL BOARD FROM ADJUSTING ESTIMATED PROPERTY VALUES; AMENDING SECTION 45-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 6

6 (House Bill No. 16; Haines) APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FIRE SUPPRESSION COSTS FOR THE BIENNIUM ENDING JUNE 30, 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 8

7 (House Bill No. 25; Galvin-Halcro) PROVIDING THAT A PRIMARY ELECTION CANDIDATE MAY FILE A DECLARATION FOR ONLY ONE PARTY'S NOMINATION; AND AMENDING SECTION 13-10-201, MCA 9

8 (House Bill No. 31; Waitschies) REVISING FERTILIZER LAWS; INCREASING FERTILIZER REGISTRATION FEES; REQUIRING ANALYTICAL INFORMATION WITH FERTILIZER REGISTRATION APPLICATIONS; REVISING THE MONTANA COMMERCIAL FERTILIZER LAWS TO ALLOW FOR AN INCREASE IN THE INSPECTION FEE PER TON OF ANHYDROUS AMMONIA AND TO PROVIDE THE MINIMUM AND MAXIMUM AMOUNTS TO WHICH THE FEE MAY BE ADJUSTED BY RULE; ELIMINATING THE MANDATORY HEARING BEFORE INSPECTION FEES CAN BE CHANGED BY RULE; AMENDING SECTIONS 80-10-201 AND 80-10-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 10

9 (House Bill No. 34; Jacobson) PROVIDING THAT THE PURCHASE OF RETAIL INSTALLMENT CONTRACTS ENTERED INTO IN THIS STATE IS SUBJECT TO REGULATION BY THE DEPARTMENT OF ADMINISTRATION; AND AMENDING SECTION 31-1-221, MCA. 12

10 (House Bill No. 58; Erickson) PROVIDING THAT UNPAID INDIVIDUAL INCOME TAXES ARE DUE ON OR BEFORE THE DATE REQUIRED FOR FILING A TAX RETURN AND NOT NECESSARILY AT THE TIME OF THE FILING OF THE TAX RETURN; AND AMENDING SECTION 15-30-142, MCA 13

11 (House Bill No. 62; Lehman) REVISING THE STATE APIARY LAWS BY PROVIDING FOR A STATE SPECIAL REVENUE ACCOUNT AND FUNDING SOURCE; FURTHER DEFINING THE TERM "APIARY"; EXPANDING THE DEFINITION OF "PEST"; ESTABLISHING MAXIMUM AND MINIMUM REGISTRATION AND INSPECTION FEES AND ALLOWING THE DEPARTMENT OF AGRICULTURE TO REVISE THESE FEES BY RULE; PROVIDING FOR THE DISPOSITION OF FUNDS RECEIVED AS THE RESULT OF A PENALTY; AMENDING SECTIONS 80-6-101, 80-6-105, 80-6-202, AND 80-6-303, MCA; REPEALING SECTION 80-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 15

12 (House Bill No. 69; Smith) REVISING LAWS RELATING TO NOTARY PUBLIC PROCESSES AND FORMS; AND AMENDING SECTIONS 1-5-405, 1-5-416, AND 1-5-610, MCA 18

13 (House Bill No. 70; Parker) CLARIFYING THE PROCEDURE FOR DISMISSAL OF A DEFENDANT'S APPEAL OF A CONVICTION TO THE DISTRICT COURT; AND AMENDING SECTION 46-17-311, MCA 22

14 (House Bill No. 83; Peterson) GENERALLY REVISING WELL LOG REPORTING REQUIREMENTS; REQUIRING WELL LOG REPORTS TO BE FILED WITH THE MONTANA STATE BUREAU OF MINES AND GEOLOGY; REQUIRING THE WELL LOG REPORT FORM OR FORMAT TO BE SPECIFIED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION IN CONSULTATION WITH THE BOARD OF

TITLE CONTENTS

WATER WELL CONTRACTORS AND THE MONTANA STATE BUREAU OF MINES AND GEOLOGY; AUTHORIZING THE SUBMISSION OF WELL LOG REPORTS IN AN ELECTRONIC FORMAT; AMENDING SECTION 85-2-516, MCA; AND PROVIDING AN EFFECTIVE DATE. 22

15 (House Bill No. 132; Musgrove) REVISING THE LAWS RELATING TO MUNICIPAL CLASSIFICATION; ALLOWING A CITY WITH A POPULATION OF BETWEEN 9,000 AND 10,000 TO BE EITHER A FIRST-CLASS OR SECOND-CLASS CITY; REMOVING THE REFERENCE TO AN ANNUAL ELECTION WHEN AN ELECTION IS REQUIRED BECAUSE OF RECLASSIFICATION; AMENDING SECTIONS 7-1-4112 AND 7-1-4116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 23

16 (House Bill No. 153; Ballantyne) ALLOWING AN EMPLOYEE OF A STATE OR LOCAL EDUCATIONAL AGENCY THAT IS NOT PROVIDING EDUCATIONAL SERVICES TO A CHILD WITH A DISABILITY TO SERVE AS A SURROGATE PARENT FOR THAT CHILD; AMENDING SECTION 20-7-461, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 24

17 (House Bill No. 39; Gallik) ADOPTING THE MOST RECENT VERSION OF FEDERAL LAWS AND REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, FOR USE BY THE STATE MILITARY FORCES; AND AMENDING SECTION 10-1-104, MCA. 25

18 (House Bill No. 46; Haines) INCREASING TO \$40 MILLION THE AUTHORITY TO ISSUE AND SELL GENERAL OBLIGATION BONDS FOR THE STATE'S SHARE OF THE WATER POLLUTION CONTROL STATE REVOLVING FUND PROGRAM; INCREASING TO \$30 MILLION THE AUTHORITY TO ISSUE AND SELL GENERAL OBLIGATION BONDS FOR THE STATE'S SHARE OF THE DRINKING WATER STATE REVOLVING FUND PROGRAM; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTIONS 75-5-1122 AND 75-6-227, MCA; AND PROVIDING AN EFFECTIVE DATE. 25

19 (House Bill No. 48; Newman) REVISING THE DUTIES OF AN ASSIGNED COUNSEL WHO DETERMINES THAT AN APPEAL IN A CRIMINAL CASE WOULD BE FRIVOLOUS OR WHOLLY WITHOUT MERIT; AND AMENDING SECTION 46-8-103, MCA. 26

20 (House Bill No. 68; Kaufmann) REQUIRING OBEDIENCE TO THE TRAFFIC DIRECTION OF FLAG PERSONS AND CROSSING GUARDS; AND AMENDING SECTIONS 61-8-102 AND 61-8-105, MCA. 27

21 (House Bill No. 78; Branae) TRANSFERRING AUTHORITY FOR APPROVING THE CONDUCT OF SCHOOL ON SATURDAY FROM THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO THE SCHOOL DISTRICT TRUSTEES; AMENDING SECTIONS 20-1-303, 20-3-106, AND 20-3-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 27

22 (House Bill No. 84; Newman) REVISING AND CLARIFYING THE OFFENSE OF MITIGATED DELIBERATE HOMICIDE TO RESOLVE THE CONFUSION THAT ARISES IN TRYING THE OFFENSE; AMENDING SECTION 45-5-103, MCA; AND PROVIDING AN APPLICABILITY DATE 31

23 (House Bill No. 23; Matthews) ALLOWING THE USE OF THE PRIOR 3-YEAR AVERAGE ENROLLMENT TO CALCULATE REVERSIONS FOR FUNDED RESIDENT ENROLLMENT GROWTH IN COMMUNITY COLLEGES; AMENDING SECTION 17-7-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 32

24 *(House Bill No. 35; Jacobson)* PROVIDING A PUBLIC EMPLOYMENT HIRING PREFERENCE FOR ELIGIBLE FORMER AND ACTIVE MEMBERS OF THE MONTANA ARMY AND AIR NATIONAL GUARD; AMENDING SECTION 39-29-101, MCA; AND PROVIDING AN APPLICABILITY DATE 33

25 *(House Bill No. 43; Cohenour)* ELIMINATING THE REQUIREMENT THAT ASBESTOS CONTROL PERMIT FEES FOR EACH ANNUAL PERMIT REFLECT ACTUAL COSTS FOR THAT PERMIT; PROVIDING THAT FEES MUST BE COMMENSURATE WITH COSTS OF PERMIT ISSUANCE AND ADMINISTRATION; AMENDING SECTIONS 75-2-503 AND 75-2-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 35

26 *(House Bill No. 44; Smith)* PROVIDING THAT CERTAIN MEMBERS OF THE PUBLIC EMPLOYEES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', FIREFIGHTERS' UNIFIED, OR JUDGES' RETIREMENT SYSTEMS WITH AT LEAST 5 YEARS OF SERVICE CREDIT MAY PURCHASE MILITARY SERVICE FOR THE ACTUARIAL COST OF THE SERVICE; PROVIDING THAT MILITARY SERVICE PURCHASED IN THE SHERIFFS' AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS IS COUNTED AS MEMBERSHIP SERVICE; AMENDING SECTIONS 19-3-503, 19-6-801, 19-7-803, 19-7-804, 19-8-901, 19-9-403, AND 19-13-403, MCA; AND PROVIDING AN EFFECTIVE DATE 36

27 *(House Bill No. 53; Newman)* SUBSTITUTING THE DETENTION CENTER FOR THE COURT AS THE ENTITY THAT MUST NOTIFY THE VICTIM WHEN A PERSON ACCUSED OF A VIOLATION OF SECTION 45-5-206, 45-5-220, OR 45-5-626, MCA, IS ADMITTED TO BAIL; AND AMENDING SECTION 46-9-108, MCA. 40

28 *(House Bill No. 102; Cohenour)* ELIMINATING THE REQUIREMENT THAT MONEY RECEIVED FROM THE FEDERAL GOVERNMENT BE DEPOSITED IN THE RADON CONTROL ACCOUNT; AMENDING SECTION 75-3-607, MCA; AND PROVIDING AN EFFECTIVE DATE. 41

29 *(House Bill No. 162; Callahan)* INCREASING THE VIDEO GAMBLING MACHINE ANNUAL PERMIT FEE; INCREASING THE AMOUNT OF THE FEE THAT IS USED BY THE DEPARTMENT OF JUSTICE TO ADMINISTER THE VIDEO GAMBLING MACHINE LAW; AMENDING SECTION 23-5-612, MCA; AND PROVIDING AN EFFECTIVE DATE. 42

30 *(House Bill No. 167; Schrumptf)* GENERALLY REVISING PUBLIC RECORDS MANAGEMENT LAWS; REVISING THE DEFINITION OF "PUBLIC RECORDS" WITH RESPECT TO THE RETENTION AND STORAGE OF STATE AND LOCAL GOVERNMENT MATERIALS; AUTHORIZING THE STORAGE OF PERMANENT PUBLIC RECORDS AT LOCATIONS OTHER THAN THE STATE ARCHIVES OR STATE RECORDS CENTER; REQUIRING EACH STATE AGENCY TO DESIGNATE AN AGENCY RECORDS CUSTODIAN; AND AMENDING SECTIONS 2-6-202, 2-6-206, 2-6-211, 2-6-213, AND 2-6-401, MCA. 43

31 *(House Bill No. 38; Olson)* REMOVING MISDEMEANOR CRIMINAL PENALTIES AND INCREASING CIVIL PENALTIES FOR LOBBYISTS AND LOBBYIST PRINCIPALS IN NONCOMPLIANCE WITH TIMELY FILING OF REPORTS; PROVIDING FOR A HEARING WHEN A CIVIL PENALTY IS IMPOSED FOR LATE FILING OF REPORTS; EXPANDING THE DUTIES OF THE COMMISSIONER OF POLITICAL PRACTICES REGARDING VIOLATIONS OF LOBBYING LAWS; EXTENDING THE PERIOD TO BRING AN ACTION; AMENDING SECTIONS 5-7-108,

TITLE CONTENTS

	5-7-209, AND 5-7-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	45
32	<i>(House Bill No. 136; Fisher)</i> ELIMINATING THE ALLOCATION AND STATUTORY APPROPRIATION OF INTEREST INCOME FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE OFFICE OF ECONOMIC DEVELOPMENT FOR BUSINESS RECRUITMENT AND RETENTION; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE	48
33	<i>(House Bill No. 175; Clark)</i> CLARIFYING THE EXECUTIVE BRANCH OVERSIGHT DUTIES OF THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTION 75-1-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	50
34	<i>(House Bill No. 207; Laslovich)</i> CHANGING THE GENERAL ASSESSMENT DAY FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE FOR SUPPLEMENTAL ASSESSMENTS FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE DEPARTMENT OF REVENUE SHALL CERTIFY TOTAL TAXABLE VALUE TO EACH TAXING AUTHORITY FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE AN ESTIMATE OF TOTAL TAXABLE VALUE WITHIN THE JURISDICTION OF A TAXING AUTHORITY BY THE SECOND MONDAY IN JULY UPON RECEIPT OF A REQUEST FROM THE TAXING AUTHORITY; CHANGING THE DATE BY WHICH THE DEPARTMENT OF REVENUE SHALL DELIVER A CERTIFIED COPY OF THE PROPERTY TAX RECORD TO ALL CITIES OF THE THIRD CLASS AND TOWNS WITHIN EACH COUNTY THAT MAKE WRITTEN REQUEST FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE DEPARTMENT OF REVENUE SHALL DELIVER TO THE COUNTY SUPERINTENDENT AND TO EACH CITY OR TOWN CLERK A STATEMENT SHOWING THE SEPARATE TOTAL ASSESSED VALUE AND THE TOTAL TAXABLE VALUE OF ALL PROPERTY IN THE DISTRICT, CITY, OR TOWN FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE BOARD OF COMMISSIONERS OF EACH IRRIGATION DISTRICT ORGANIZED UNDER TITLE 85, CHAPTER 7, PARTS 1 AND 15, MCA, SHALL ASCERTAIN AND LEVY THE AMOUNT TO BE RAISED THAT YEAR FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE DIRECTORS OF A CONSERVATION DISTRICT SHALL PROVIDE THE DEPARTMENT OF REVENUE AND COUNTY TREASURER OR TREASURERS A STATEMENT OF THE SPECIAL ASSESSMENTS TO BE COLLECTED FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; AMENDING SECTIONS 7-6-4410, 15-8-201, 15-8-204, 15-10-202, 20-9-122, 85-7-2104, AND 85-9-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.	52
35	<i>(House Bill No. 232; Devlin)</i> REVISING LAWS GOVERNING COUNTY, MUNICIPAL, AND SPECIAL DISTRICT CAPITAL IMPROVEMENT FUNDS; INCREASING TO \$500,000 THE LIMITATION ON COUNTY ROAD AND BRIDGE IMPROVEMENT FUNDS; AMENDING SECTIONS 7-6-616, 7-7-2101, 7-14-2506, 7-21-3406, 7-21-3413, AND 7-33-2111, MCA; REPEALING SECTION 7-21-3414, MCA; AND PROVIDING AN EFFECTIVE DATE	55

MONTANA SESSION LAWS 2003

36	(House Bill No. 96; Devlin) REPEALING THE ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE TAX CREDIT; REPEALING SECTIONS 15-53-201, 15-53-202, AND 15-53-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	57
37	(House Bill No. 115; Bookout-Reinicke) INCREASING THE MEMBERSHIP OF THE STATE EMERGENCY RESPONSE COMMISSION FROM 19 MEMBERS TO 27 MEMBERS AND CHANGING THE MAKEUP OF THE COMMISSION'S MEMBERSHIP; PROVIDING THAT THE COMMISSION ACTS AS AN ALL-HAZARD ADVISORY BOARD TO THE DIVISION OF DISASTER AND EMERGENCY SERVICES; AND AMENDING SECTION 10-3-1204, MCA	58
38	(House Bill No. 143; Lambert) LIMITING THE LIABILITY OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD WITH RESPECT TO ACTS OR OMISSIONS OF AND INCORRECT REPORTING BY EMPLOYERS OR OTHER REPORTING AGENCIES; AMENDING SECTION 19-2-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	59
39	(House Bill No. 233; Waitschies) CLARIFYING THE TAX CREDIT FOR THE INSTALLATION OF A GEOTHERMAL SYSTEM BY REMOVING AN ERRONEOUS INTERNAL REFERENCE; AMENDING SECTION 15-32-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	60
40	(House Bill No. 47; Clark) PROVIDING AN ADDITIONAL METHOD FOR CREATION OF A HERD DISTRICT; AND AMENDING SECTION 81-4-301, MCA	61
41	(House Bill No. 88; Kasten) GENERALLY REVISING THE LAWS GOVERNING DEDICATED REVENUE PROVISIONS; REVISING THE PROCEDURE FOR REVIEWING DEDICATED REVENUE PROVISIONS FOR LOCAL GOVERNMENTS; PROVIDING FOR THE DEPOSIT OF 50 PERCENT OF FEDERAL TAYLOR GRAZING FUNDS IN THE STATE GENERAL FUND TO BE USED FOR THE ELEMENTARY EDUCATION BASE FUNDING PROGRAMS OF A COUNTY; ELIMINATING THE SEPARATE STATUTORY PROCESS FOR REVIEWING DEDICATED REVENUE PROVISIONS FOR LOCAL GOVERNMENTS; AMENDING SECTIONS 17-1-501, 17-1-502, 17-1-505, 17-3-222, AND 20-9-331, MCA; REPEALING SECTIONS 17-1-601, 17-1-602, AND 17-1-603, MCA; AND PROVIDING AN EFFECTIVE DATE	62
42	(House Bill No. 93; Lawson) REQUIRING THE DEPARTMENT OF JUSTICE TO ADOPT RULES ALLOWING FOR THE EARLY REREGISTRATION OF A MOTOR VEHICLE; AND AMENDING SECTION 61-3-315, MCA	66
43	(House Bill No. 168; Callahan) CREATING A PERFORMANCE ASSURANCE STATE SPECIAL REVENUE ACCOUNT FOR PAYMENTS MADE BY TELECOMMUNICATIONS CARRIERS SUBJECT TO A PERFORMANCE ASSURANCE PLAN; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	67
44	(House Bill No. 208; Shockley) CLARIFYING THAT PARENTAL RIGHTS MAY BE TERMINATED WITHOUT REQUIRING A TREATMENT PLAN IF TWO MEDICAL DOCTORS OR CLINICAL PSYCHOLOGISTS SUBMIT TESTIMONY THAT THE PARENT CANNOT ASSUME THE ROLE OF PARENT WITHIN A REASONABLE TIME; AMENDING SECTION 41-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	68

TITLE CONTENTS

45	<i>(House Bill No. 209; Shockley)</i> CONFORMING THE EFFECT OF A LIEN RESULTING FROM FILING A TRANSCRIPT OF A JUDGMENT IN ANOTHER COUNTY TO THE LIEN RESULTING FROM THE DOCKETING OF A JUDGMENT; AMENDING SECTION 25-9-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	70
46	<i>(House Bill No. 112; Pattison)</i> ALLOWING VEHICLES TO PASS SCHOOL BUSES THAT ARE STOPPED TO RECEIVE OR DISCHARGE SCHOOL CHILDREN IN DESIGNATED SCHOOL BUS TURNOUTS; SPECIFYING THE REQUIREMENTS NECESSARY TO DESIGNATE A SCHOOL BUS TURNOUT; AND AMENDING SECTIONS 61-8-301, 61-8-351, AND 61-8-715, MCA	70
47	<i>(House Bill No. 151; Olson)</i> ALLOWING ELECTION JUDGES TO BE PAID MORE THAN MINIMUM WAGE; AND AMENDING SECTION 13-4-106, MCA.	73
48	<i>(House Bill No. 217; Brueggeman)</i> ELIMINATING THE TRANSFER OF FUNDS FROM THE GENERAL FUND TO THE DEPARTMENT OF TRANSPORTATION STATE SPECIAL REVENUE NONRESTRICTED ACCOUNT IN FISCAL YEARS 2004 AND 2005; INCREASING THE AMOUNT TRANSFERRED IN FISCAL YEAR 2006 TO ACCOUNT FOR THE PERCENTAGE INCREASES LOST AS A RESULT OF NOT RECEIVING FUNDS IN FISCAL YEARS 2004 AND 2005; AMENDING SECTION 15-1-122, MCA; AND PROVIDING AN EFFECTIVE DATE. . .	73
49	<i>(House Bill No. 238; Andersen)</i> EXEMPTING LOCAL GOVERNMENT ENTITIES FROM CERTAIN REQUIREMENTS FOR SHORT-TERM LEASE OF A WATER APPROPRIATION RIGHT FOR CERTAIN DUST ABATEMENT ACTIVITIES; EXEMPTING LOCAL GOVERNMENT ENTITIES FROM CERTAIN PUBLIC NOTICE REQUIREMENTS; REQUIRING THAT A LOCAL GOVERNMENT ENTITY POST A COPY OF THE LEASE AGREEMENT AT THE POINT OF DIVERSION WHEN WATER IS DIVERTED UNDER A SHORT-TERM LEASE AGREEMENT; AMENDING SECTION 85-2-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	75
50	<i>(House Bill No. 248; Balyeat)</i> ENCOURAGING HUNTING AND FISHING BY MONTANA YOUTH BY PROVIDING THAT THE FIRST TIME A RESIDENT YOUTH WHO IS 12 YEARS OF AGE OR OLDER AND LESS THAN 18 YEARS OF AGE APPLIES FOR A HUNTING LICENSE, THE YOUTH IS ENTITLED TO RECEIVE A YOUTH COMBINATION SPORTS LICENSE FREE OF CHARGE; AMENDING SECTION 87-2-805, MCA; AND PROVIDING AN EFFECTIVE DATE.	77
51	<i>(House Bill No. 406; Waitschies)</i> PERMITTING THE DEPARTMENT OF REVENUE TO DEPOSIT MONEY IT HAS RECEIVED WITHIN A REASONABLE TIME AFTER RECEIPT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	78
52	<i>(Senate Bill No. 7; Butcher)</i> CREATING AND REVISING DEFINITIONS OF CERTAIN LOCAL, STATE, TRIBAL, AND FEDERAL OFFICIALS TO PROVIDE EXEMPTIONS UNDER LOBBYING LAWS; REVISING DEFINITIONS OF "LOBBYING", "LOBBYING FOR HIRE", AND "PAYMENT TO INFLUENCE OFFICIAL ACTION"; EXTENDING THE TIME TO HEAR AN APPEAL FOR A DENIED LICENSE TO LOBBY; PROVIDING EXEMPTIONS TO PAYMENT OF THE LOBBYIST LICENSE FEE; AMENDING SECTIONS 5-7-102 AND 5-7-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	79
53	<i>(House Bill No. 22; Kaufmann)</i> GENERALLY REVISING AND UPDATING PROVISIONS GOVERNING TRAFFIC CONTROL DEVICES AND PEDESTRIAN CONTROL SIGNALS; ESTABLISHING VEHICLE	

OPERATOR REQUIREMENTS WHEN LANE USE CONTROL SIGNALS ARE IN PLACE; AMENDING SECTIONS 61-8-201, 61-8-202, 61-8-203, 61-8-207, 61-8-208, 61-8-209, AND 61-8-210, MCA; AND REPEALING SECTION 61-8-205, MCA 82

54 (House Bill No. 51; Clark) GENERALLY REVISING THE LICENSURE OF PERSONAL-CARE FACILITIES; CHANGING THE NAME OF "PERSONAL-CARE FACILITY" TO "ASSISTED LIVING FACILITY" FOR PURPOSES OF HEALTH CARE FACILITY LICENSURE; REVISING THE REQUIREMENTS FOR THE TYPES OF RESIDENTS SERVED BY ASSISTED LIVING FACILITIES; PROVIDING FOR A NEW CATEGORY C THAT CLASSIFIES COGNITIVELY IMPAIRED RESIDENTS WHO ARE SERVED BY ASSISTED LIVING FACILITIES FOR LICENSURE PURPOSES; AND AMENDING SECTIONS 39-3-406, 50-5-101, 50-5-225, 50-5-226, 50-5-227, 50-5-1202, 50-8-101, 52-1-104, 52-3-811, 53-6-101, AND 87-2-802, MCA 87

55 (House Bill No. 80; Jackson) ALLOWING THE REDUCED FARM RATE GVW FEE TO BE APPLICABLE TO VEHICLES HAULING TIMBER HARVESTED ON A RANCH, FARM, ORCHARD, OR DAIRY TO MARKET; AMENDING SECTION 61-10-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 105

56 (House Bill No. 114; Jent) GENERALLY REVISING LAWS RELATING TO THE CAPITOL COMPLEX ADVISORY COUNCIL; CLARIFYING THAT THE DEPARTMENTS OF ADMINISTRATION AND FISH, WILDLIFE, AND PARKS SHARE THE COSTS ASSOCIATED WITH COUNCIL OPERATIONS; REQUIRING THE COUNCIL TO ADOPT AN ART AND MEMORIAL PLAN; REVISING CRITERIA FOR NAMING A STATE BUILDING, SPACE, OR ROOM IN THE CAPITOL COMPLEX AFTER AN INDIVIDUAL OR DISPLAYING A BUST, STATUE, MEMORIAL, MONUMENT, OR ART DISPLAY COMMEMORATING AN INDIVIDUAL OR EVENT; PERMITTING THE DEPARTMENT OF ADMINISTRATION TO APPROVE TEMPORARY DISPLAYS IN THE CAPITOL COMPLEX OR ON THE CAPITOL COMPLEX GROUNDS; CHANGING THE AGENCY RESPONSIBLE FOR MAINTAINING AN INVENTORY OF ART AND MEMORIALS IN THE CAPITOL COMPLEX; PROVIDING FOR THE LONG-TERM PLACEMENT OF CERTAIN ITEMS IN THE CAPITOL OR ON THE CAPITOL COMPLEX GROUNDS; ENTRUSTING CERTAIN ITEMS TO THE MONTANA HISTORICAL SOCIETY; AND AMENDING SECTIONS 2-17-803, 2-17-804, 2-17-805, 2-17-807, AND 2-17-812, MCA 105

57 (House Bill No. 121; Clark) PROVIDING THAT CERTAIN INCOME FROM THE MONTANA STATE HOSPITAL AND MONTANA MENTAL HEALTH NURSING CARE CENTER BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTION 53-1-413, MCA; AND PROVIDING AN EFFECTIVE DATE. 109

58 (Senate Bill No. 136; Butcher) CLARIFYING THAT A PUBLIC OFFICER MAY PARTICIPATE IN THE PROCEEDINGS OF OR ENGAGE IN ACTIVITIES ON BEHALF OF ORGANIZATIONS OR ASSOCIATIONS OF LOCAL GOVERNMENT OFFICIALS; AMENDING SECTION 2-2-121, MCA; AND PROVIDING AN EFFECTIVE DATE 110

59 (House Bill No. 108; Olson) ELIMINATING THE PROHIBITION ON CORPORATE CONTRIBUTIONS AND EXPENDITURES ON BALLOT ISSUES; AMENDING SECTION 13-35-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 112

60 (House Bill No. 181; Thomas) PROVIDING FOR THE REGULATION AND CERTIFICATION OF PERSONS AND ENTITIES THAT EUTHANIZE ANIMALS; ALLOWING A CERTIFIED AGENCY TO APPLY FOR

TITLE CONTENTS

	REGISTRATION TO POSSESS CONTROLLED SUBSTANCES FOR THE PURPOSE OF EUTHANIZING ANIMALS; ALLOWING A CERTIFIED EUTHANASIA TECHNICIAN TO ADMINISTER CONTROLLED SUBSTANCES UNDER THE AGENCY'S LAWFUL POSSESSION WHEN THE AGENCY AND TECHNICIAN ARE CERTIFIED BY THE BOARD OF VETERINARY MEDICINE; PROVIDING AN EXEMPTION FOR CERTIFIED AGENCIES, CERTIFIED EUTHANASIA TECHNICIANS, AND SUPPORT PERSONNEL FROM OVERSIGHT BY THE BOARD OF PHARMACY WHEN POSSESSING OR ADMINISTERING APPROVED CONTROLLED SUBSTANCES FOR EUTHANASIA; PROVIDING AN EXEMPTION TO THE PRACTICE OF VETERINARY MEDICINE FOR CERTIFIED AGENCIES AND CERTIFIED EUTHANASIA TECHNICIANS WHO ARE CONDUCTING ANIMAL EUTHANASIA; AMENDING SECTIONS 37-7-103 AND 37-18-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE	113
61	<i>(Senate Bill No. 164; Mangan)</i> REMOVING A CONFLICT BETWEEN STATUTES TO CLARIFY THAT A SHELTER CARE FACILITY MAY NOT HOLD A YOUTH IN A PHYSICALLY RESTRICTING MANNER; AMENDING SECTION 41-5-1801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	117
62	<i>(Senate Bill No. 195; Grimes)</i> REQUIRING THE MONTANA HISTORICAL SOCIETY TO COMMISSION A SCULPTURE FOR LONG-TERM PLACEMENT IN THE SENATE CHAMBERS; REQUIRING THE LEWIS AND CLARK BICENTENNIAL COMMISSION TO SECURE OUTSIDE FUNDING FOR THE SCULPTURE; AND CREATING A SENATE ADVISORY GROUP TO ADVISE THE MONTANA HISTORICAL SOCIETY ON COMMISSIONING OF THE SCULPTURE	118
63	<i>(House Bill No. 128; Rice)</i> SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IX OF THE MONTANA CONSTITUTION TO CREATE A NOXIOUS WEED MANAGEMENT TRUST FUND; PROVIDING FOR THE PROTECTION OF THE TRUST IN THE AMOUNT OF \$10 MILLION UNLESS APPROPRIATED BY A VOTE OF THREE-FOURTHS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE; AND PROVIDING FOR THE APPROPRIATION OF INTEREST, INCOME, AND A PORTION OF THE PRINCIPAL	119
64	<i>(House Bill No. 36; Lawson)</i> REVISING THE LAWS GOVERNING CREDIT UNIONS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO DETERMINE THE SCHEDULE FOR CREDIT UNION EXAMINATIONS; ELIMINATING THE MAKEUP REQUIREMENTS FOR REGULAR RESERVE ACCOUNTS AND GRANTING THE DEPARTMENT DISCRETION TO REQUIRE CREDIT UNIONS TO ESTABLISH A REGULAR RESERVE ACCOUNT; REPEALING THE DEFINITION OF RISK ASSETS; AMENDING SECTIONS 32-3-203 AND 32-3-702, MCA; AND REPEALING SECTION 32-3-704, MCA	120
65	<i>(House Bill No. 45; Lawson)</i> REVISING LAWS CONCERNING ESCROW BUSINESSES; REQUIRING APPLICANTS FOR AN ESCROW BUSINESS LICENSE TO POST A BOND IN AN AMOUNT TO BE SET BY THE DEPARTMENT OF ADMINISTRATION BY RULE; ESTABLISHING THE AMOUNT OF THE INITIAL LICENSE FEE AS \$350 AND THE AMOUNT OF THE ANNUAL LICENSE RENEWAL FEE AS \$100; PROVIDING THAT FUNDS AVAILABLE FOR WITHDRAWAL FROM AN ESCROW ACCOUNT AS A MATTER OF RIGHT MUST BE	

MONTANA SESSION LAWS 2003

x

	DISBURSED WITHIN 5 BUSINESS DAYS; AND AMENDING SECTIONS 32-7-109, 32-7-110, AND 32-7-117, MCA	121
66	<i>(House Bill No. 59; Erickson)</i> PERMITTING REVISIONS OF INCOME TAX RETURNS FOR THE ELDERLY RESIDENTIAL PROPERTY TAX CREDIT TO BE MADE WITHIN 5 YEARS FOLLOWING THE DUE DATE FOR A CLAIM FOR THE CREDIT; DELETING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE MAINTAIN RECORDS OF REQUESTS FOR EXTENSIONS; AMENDING SECTION 15-30-174, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	123
67	<i>(House Bill No. 65; Matthews)</i> GENERALLY REVISING DENTISTRY AND DENTAL HYGIENE LAWS; EXCLUDING STUDENTS OF AN ACCREDITED DENTAL HYGIENE PROGRAM FROM LICENSING REQUIREMENTS WHILE PERFORMING SUPERVISED FREE DENTAL HYGIENE SERVICES; EXCLUDING STUDENTS OF AN ACCREDITED PROGRAM WHO ARE SEEKING A D.D.S. OR D.M.D. DEGREE FROM LICENSING REQUIREMENTS IF THEY ARE PRACTICING DENTISTRY WHILE SUPERVISED AND WITHOUT CHARGE; EXCLUDING DENTAL RESIDENTS IN ADVANCED EDUCATION PROGRAMS FROM LICENSING REQUIREMENTS WHILE PERFORMING FREE CLINICAL SERVICES WITHIN THE ADVANCED EDUCATION PROGRAM; ALLOWING CERTAIN NONPRACTICING AND RETIRED DENTISTS AND DENTAL HYGIENISTS TO PROVIDE SERVICES FOR INDIGENT AND UNINSURED PERSONS IN UNDERSERVED OR CRITICAL NEED AREAS AND WAIVING THEIR RENEWAL AND LATE FEES; PROVIDING RULEMAKING AUTHORITY PERTAINING TO VOLUNTEER DENTISTS AND DENTAL HYGIENISTS; AMENDING SECTION 37-4-103, MCA; AND PROVIDING AN EFFECTIVE DATE.	124
68	<i>(House Bill No. 106; Erickson)</i> GENERALLY REVISING LAWS DEALING WITH THE DEPARTMENT OF REVENUE'S RELATIONSHIP TO PROBATE ADMINISTRATION; AMENDING SECTIONS 72-3-607, 72-3-609, 72-3-1006, 72-4-303, 72-4-305, AND 72-16-906, MCA; REPEALING SECTION 72-16-920, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	126
69	<i>(House Bill No. 149; Hedges)</i> REVISING THE CRIMINAL SENTENCE REVIEW PROCESS; ALLOWING THE REVIEW DIVISION OF THE SUPREME COURT TO MEET IN VARIOUS LOCATIONS; ALLOWING THE CHIEF JUSTICE OF THE SUPREME COURT TO DESIGNATE A REPLACEMENT FOR A MEMBER OF THE REVIEW DIVISION THAT IS UNABLE TO SERVE; ALLOWING A PERSON SENTENCED TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO APPLY FOR SENTENCE REVIEW; REQUIRING CERTAIN NOTICES TO BE GIVEN TO A DEFENDANT'S COUNSEL; CLARIFYING LANGUAGE; REQUIRING THE DECISION OF THE REVIEW DIVISION TO BE SENT TO THE COUNTY ATTORNEY AND DEFENSE COUNSEL; AMENDING SECTIONS 46-18-901, 46-18-902, 46-18-903, 46-18-904, AND 46-18-905, MCA; AND PROVIDING AN EFFECTIVE DATE	129
70	<i>(House Bill No. 353; Laszloffy)</i> NAMING THE CITY OF LAUREL, MONTANA, AS THE OFFICIAL SITE OF THE MONTANA STATE FIREFIGHTERS' MEMORIAL	131
71	<i>(House Bill No. 364; Bergren)</i> CLARIFYING THAT THE CONSTITUTIONAL PROVISION RESTRICTING THE EXPENDITURE OF REVENUE FROM SPECIAL LEVIES ON AGRICULTURAL COMMODITIES APPLIES TO ALL FEES ASSESSED BY THE DEPARTMENT OF AGRICULTURE FOR LICENSES, REGISTRATIONS,	

TITLE CONTENTS

	INSPECTIONS, AND OTHER PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	132
72	<i>(Senate Bill No. 41; Tropila)</i> CHANGING THE DESIGNATION OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND FROM AN INDEPENDENT INSTITUTION TO A STATE-SUPPORTED SPECIAL SCHOOL; AMENDING SECTION 20-8-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	132
73	<i>(Senate Bill No. 42; Tropila)</i> REQUIRING THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO ESTABLISH A SYSTEM FOR TRACKING HEARING IMPAIRED OR VISUALLY IMPAIRED CHILDREN; AND AMENDING SECTION 20-8-102, MCA.	133
74	<i>(Senate Bill No. 43; Tropila)</i> CHANGING THE FEE FOR SERVICES COLLECTED BY THE MONTANA SCHOOL FOR THE DEAF AND BLIND FROM A MANDATORY FEE TO AN OPTIONAL FEE; AND AMENDING SECTION 20-8-102, MCA.	134
75	<i>(House Bill No. 194; Barrett)</i> GENERALLY REVISING PROVISIONS RELATED TO THE FORMS AND INFORMATION THAT MUST BE FILED WITH THE SECRETARY OF STATE BY A BUSINESS, CORPORATION, PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, OR LIMITED LIABILITY COMPANY; PROVIDING RULEMAKING AUTHORITY TO REQUIRE USE OF STANDARDIZED FORMS; SPECIFYING THE REINSTATEMENT APPLICATION PROCESS FOR LIMITED PARTNERSHIPS; ELIMINATING THE REQUIREMENT FOR A COPY TO BE FILED WITH THE ORIGINAL FOR CERTAIN FILINGS; ELIMINATING THE REQUIREMENT THAT THE SECRETARY OF STATE PROVIDE A SECOND RENEWAL NOTIFICATION TO LIMITED LIABILITY PARTNERSHIPS; CLARIFYING THAT THE COMPLETE STREET ADDRESS MUST BE PROVIDED WITH CERTAIN FILINGS; ELIMINATING THE REQUIREMENT TO PROVIDE THE NAME OF THE CURRENT REGISTERED AGENT WHEN FILING A CHANGE OF OFFICE OR AGENT; REVISING WHO SHALL SIGN A RESOLUTION CERTIFYING A CORPORATE NAME; PROVIDING THAT THE SECRETARY OF STATE DELIVER A CONFIRMATION LETTER RATHER THAN THE DOCUMENT COPY WHEN A DOCUMENT HAS BEEN RECEIVED; REQUIRING THAT A FILING FOR REINSTATEMENT INCLUDE COPIES OF ALL ANNUAL REPORTS NOT PREVIOUSLY FILED; AND AMENDING SECTIONS 30-13-206, 30-13-207, 35-1-216, 35-1-217, 35-1-314, 35-1-1031, 35-1-1308, 35-1-1309, 35-2-310, 35-6-201, 35-8-105, 35-8-202, 35-8-210, 35-8-912, 35-12-601, 35-12-606, 35-12-611, 35-12-612, 35-12-1302, AND 35-12-1303, MCA	134
76	<i>(House Bill No. 392; Weiss)</i> ELIMINATING THE INTERIM UNIVERSAL ACCESS PROGRAM FOR ADVANCED TELECOMMUNICATIONS SERVICES; REPEALING SECTIONS 69-3-856, 69-3-857, 69-3-858, 69-3-859, 69-3-861, AND 69-3-862, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	146
77	<i>(House Bill No. 601; Ripley)</i> REQUIRING TOWER ROCK TO REMAIN STATE-OWNED PROPERTY AS A GIFT TO FUTURE GENERATIONS OF MONTANANS IN HONOR OF THE LEWIS AND CLARK EXPEDITION	147
78	<i>(House Bill No. 29; Olson)</i> CLARIFYING THAT PARTICIPATION IN THE BOOT CAMP INCARCERATION PROGRAM MAY REDUCE THE PERIOD OF INCARCERATION BUT NOT THE LENGTH OF A SENTENCE; REQUIRING ADVICE FROM THE PROSECUTING ATTORNEY FOR PARTICIPATION IN THE BOOT CAMP	

MONTANA SESSION LAWS 2003

xii

	INCARCERATION PROGRAM BY CERTAIN INMATES; AND AMENDING SECTIONS 53-30-402 AND 53-30-403, MCA	147
79	<i>(House Bill No. 77; Jent)</i> PROVIDING A PROCEDURE FOR DNA TESTING OF A PERSON CONVICTED OF A FELONY WHO IS SERVING A TERM OF INCARCERATION; AND REQUIRING THE STATE TO PRESERVE SCIENTIFIC IDENTIFICATION EVIDENCE THAT THE STATE HAS REASON TO BELIEVE CONTAINS DNA MATERIAL AND THAT IS OBTAINED IN CONNECTION WITH A FELONY FOR WHICH A CONVICTION IS OBTAINED	148
80	<i>(House Bill No. 101; Jent)</i> CLARIFYING THAT A NONRESIDENT MAY NOT APPLY FOR OR PURCHASE FOR A NONRESIDENT'S USE A RESIDENT WILDLIFE CONSERVATION LICENSE OR HUNTING OR FISHING LICENSE OR PERMIT AND PROVIDING A PENALTY FOR VIOLATION OF THIS PROVISION; AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE LICENSES BY TELEPHONE, ON THE INTERNET, OR BY OTHER ELECTRONIC MEANS; PROVIDING THAT LICENSES NEED NOT BE SUBSCRIBED TO OR COUNTERSIGNED BY THE PERSON ISSUING THE LICENSE; REVISING THE LAWS GOVERNING MISDEMEANOR AND FELONY POSSESSION OF HUNTING LICENSES; ESTABLISHING THE OFFENSE OF MISDEMEANOR AND FELONY POSSESSION OF FISHING LICENSES AND PERMITS; AUTHORIZING THE DEPARTMENT TO ADOPT RULES THAT PRESCRIBE ELIGIBILITY STANDARDS FOR LICENSES OR PERMITS OBTAINED BY TELEPHONE, BY MAIL, ON THE INTERNET, OR BY OTHER ELECTRONIC MEANS; CLARIFYING THAT A PERSON MAY NOT CARRY A LICENSE OR PERMIT OBTAINED IN VIOLATION OF APPLICABLE LAW OR RULE; ALLOWING A PERSON WHO WISHES TO RECEIVE A BOWHUNTING LICENSE TO COMPLETE A NATIONAL BOWHUNTER EDUCATION FOUNDATION PROGRAM OR ANOTHER BOWHUNTER EDUCATION PROGRAM APPROVED BY THE DEPARTMENT; AMENDING SECTIONS 87-2-103, 87-2-105, 87-2-106, 87-2-107, AND 87-2-114, MCA; AND PROVIDING AN EFFECTIVE DATE	151
81	<i>(House Bill No. 116; Kaufmann)</i> ESTABLISHING A DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION IN THE DEPARTMENT OF JUSTICE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE	156
82	<i>(House Bill No. 137; Lange)</i> REPEALING THE TERMINATION DATE FOR THE REQUIREMENT THAT AT LEAST 50 PERCENT OF FISHING LICENSE FUNDS ALLOCATED FOR FISHING ACCESS SITES AND STREAM, RIVER, AND LAKE FRONTAGES BE USED FOR OPERATION AND MAINTENANCE AND BE PRIORITIZED AND EXPENDED FOR WEED MANAGEMENT, STREAMBANK RESTORATION, AND GENERAL OPERATION AND MAINTENANCE; REPEALING SECTION 4, CHAPTER 428, LAWS OF 1995, AND SECTION 1, CHAPTER 109, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	158
83	<i>(House Bill No. 150; Lawson)</i> EXEMPTING PROVIDERS OF COMPANIONSHIP SERVICES OR RESPITE CARE FOR THE AGED OR INFIRM FROM WAGE AND HOUR REQUIREMENTS TO CONFORM TO FEDERAL LAW; EXEMPTING THE PROVISION OF COMPANIONSHIP SERVICES OR RESPITE CARE TO THE AGED OR INFIRM FROM MINIMUM WAGE AND OVERTIME, UNEMPLOYMENT INSURANCE, AND WORKERS' COMPENSATION INSURANCE IF THE PERSON PROVIDING THE SERVICE IS EMPLOYED DIRECTLY BY THE FAMILY OR A LEGAL GUARDIAN; AND AMENDING SECTIONS 39-3-406, 39-51-204, AND 39-71-401, MCA.	158

84 *(House Bill No. 187; Gallus)* GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING REGULATION OF FISH; DESIGNATING YELLOW PERCH AND CRAPPIE AS GAME FISH; AUTHORIZING A PURCHASER OF A RESIDENT TEMPORARY FISHING LICENSE TO PURCHASE A PADDLEFISH TAG; PROVIDING THAT A SCIENTIFIC COLLECTION PERMITTEE MAY NOT COLLECT FISH USING ANY EXPLOSIVE; ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION TO AUTHORIZE THE TAKING OF WHITEFISH WITH SPEARS OR GIGS; REVISING THE LAWS GOVERNING REGULATION OF FISHING TO CHANGE THE TERM "DEPARTMENT" TO "COMMISSION" TO MAKE THE LAW CONSISTENT WITH THE DUTY OF THE COMMISSION TO ESTABLISH FISHING RULES; ELIMINATING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO AUTHORIZE TAKING BLACK BASS IN FLATHEAD LAKE; ELIMINATING THE AUTHORITY TO AUTHORIZE SNAGGING OF COHO (SILVER SALMON) AND AUTHORIZING THE SNAGGING OF CHINOOK SALMON; EXPANDING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT AND THE COMMISSION TO REGULATE COMMERCIAL FISH OPERATIONS; AMENDING SECTIONS 87-2-101, 87-2-306, 87-2-806, 87-3-204, 87-3-205, 87-4-601, 87-4-609, AND 87-4-610, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 168

85 *(House Bill No. 321; Younkin)* PROVIDING FOR MEDICAL ASSISTANTS; PROVIDING A DEFINITION OF "MEDICAL ASSISTANT"; PROVIDING FOR EXEMPTION FROM LICENSING REQUIREMENTS; PROVIDING FOR PHYSICIAN OR PODIATRIST SUPERVISION OF AND RESPONSIBILITY FOR A MEDICAL ASSISTANT; REQUIRING THE BOARD OF MEDICAL EXAMINERS TO ADOPT GUIDELINES BY ADMINISTRATIVE RULE REGARDING THE PERFORMANCE OF ADMINISTRATIVE AND CLINICAL TASKS; AMENDING SECTIONS 37-3-102, 37-3-103, 37-3-303, AND 37-3-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 177

86 *(House Bill No. 366; Clark)* ALLOWING THE TRUSTEES OF CERTAIN SCHOOL DISTRICTS TO HOLD QUARTERLY MEETINGS INSTEAD OF FOUR MEETINGS IN SPECIFIC MONTHS; AMENDING SECTION 20-3-322, MCA; AND PROVIDING AN EFFECTIVE DATE. 180

87 *(House Bill No. 511; Everett)* AUTHORIZING A GOVERNING BODY TO ADOPT OR REVISE CERTAIN ZONING REGULATIONS THAT ARE CONSISTENT WITH A MASTER PLAN THAT WAS ADOPTED BEFORE OCTOBER 1, 1999, AND THAT DOES NOT MEET THE REQUIREMENTS OF A GROWTH POLICY AND SPECIFYING THAT THE ADOPTION OR REVISION MUST BE MADE BEFORE OCTOBER 1, 2006; AUTHORIZING THE REPEAL AND REVISION OF A MASTER PLAN FOLLOWING THE PROCEDURES IN LAW FOR REPEAL AND REVISION OF A GROWTH POLICY; AMENDING SECTIONS 76-1-604, 76-2-201, 76-2-203, 76-2-206, 76-2-303, AND 76-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 181

88 *(House Bill No. 636; Forrester)* REVISING LAWS GOVERNING TOW TRUCKS AND THE TOW TRUCK LAW ENFORCEMENT ROTATION SYSTEM; ESTABLISHING CERTIFICATION REQUIREMENTS FOR TOW TRUCK OPERATORS TO QUALIFY FOR PARTICIPATION IN THE TOW TRUCK LAW ENFORCEMENT ROTATION SYSTEM; PROVIDING DEFINITIONS; IDENTIFYING MANUFACTURER'S BOOM RATINGS FOR TOW TRUCK CLASSIFICATION; REQUIRING THE ESTABLISHMENT OF THE TOW TRUCK COMPLAINT RESOLUTION COMMITTEE AND ASSIGNING RESPONSIBILITIES TO THE COMMITTEE; SPECIFYING THE AMOUNT OF INSURANCE A

COMMERCIAL TOW TRUCK OPERATOR MUST CARRY; REQUIRING THAT PROOF OF INSURANCE BE SENT TO THE PUBLIC SERVICE COMMISSION; ESTABLISHING REQUIREMENTS FOR A TOW TRUCK OPERATOR'S FENCED LOT; ALLOWING THE HIGHWAY PATROL TO CHARGE A FEE FOR THE INSPECTION DECAL; SPECIFYING THE KIND OF INFORMATION THAT QUALIFIED TOW TRUCK OPERATORS MUST PROVIDE; ESTABLISHING THE PROCEDURE FOR MULTIPLE TOW TRUCK OPERATORS TO BE ON A ROTATION LIST FROM A SINGLE STORAGE OR IMPOUNDMENT FACILITY; ALLOWING ONLY ONE TOW TRUCK OPERATION FOR EACH OWNER TO BE PLACED ON A ROTATION LIST; ESTABLISHING REQUIREMENTS FOR SATELLITE TOW TRUCK OPERATIONS; REQUIRING LOCAL LAW ENFORCEMENT AGENCIES TO COMPLY WITH THE ROTATION SYSTEM PROVISIONS; REQUIRING THAT LISTS OF ROTATION SYSTEM CALLS BE MADE AVAILABLE; AND AMENDING SECTIONS 61-8-903, 61-8-904, 61-8-905, 61-8-906, 61-8-907, 61-8-908, 61-8-910, AND 69-12-102, MCA

184

89 (Senate Bill No. 51; Bohlinger) AUTHORIZING THE BOARD OF HOUSING TO INCREASE THE TOTAL AMOUNT OF ITS OUTSTANDING NOTES AND BONDS FROM \$975 MILLION TO \$1.5 BILLION; PROVIDING FOR SEMIANNUAL INSTALLMENT PAYMENTS ON SERIAL BONDS; AND AMENDING SECTION 90-6-111, MCA.

191

90 (Senate Bill No. 69; Nelson) AMENDING THE LEGISLATIVE MEMBERSHIP REQUIREMENT FOR THE DRINKING WATER STATE REVOLVING FUND ADVISORY COMMITTEE; AND AMENDING SECTION 75-6-231, MCA

192

91 (House Bill No. 411; Gallus) PROVIDING FOR THE TRANSFER OF RIVER-USE DAYS TO THE NEW OWNER OF A FISHING OUTFITTER BUSINESS; AMENDING SECTION 37-47-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

193

92 (House Bill No. 471; Wanzenried) EXPANDING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION AND THE CHIEF INFORMATION OFFICER REGARDING OVERSIGHT OF INFORMATION TECHNOLOGY PURCHASES; SETTING RESTRICTIONS ON STATE FINANCING OF INFORMATION TECHNOLOGY PURCHASES; ALLOWING BONDS TO BE USED ON A LIMITED BASIS FOR INFORMATION TECHNOLOGY PURCHASES; AMENDING SECTION 2-17-512, MCA; AND PROVIDING AN EFFECTIVE DATE

193

93 (House Bill No. 49; Haines) REVISING LAWS RELATING TO PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES; DEFINING "SPA" AND "TOURIST HOME" AND CLARIFYING THE DEFINITION OF "PUBLIC SWIMMING POOL"; EXEMPTING TOURIST HOMES THAT HAVE SPA FACILITIES FROM THE REQUIREMENT OF HAVING PERSONS TRAINED IN CARDIOPULMONARY RESUSCITATION ON THE PREMISES; ELIMINATING THE EXEMPTION FOR THE STATE AND ITS POLITICAL SUBDIVISIONS TO OBTAIN LICENSES TO OPERATE PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES; PROVIDING FOR COOPERATIVE AGREEMENTS BETWEEN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND OTHER AGENCIES THAT OPERATE SWIMMING POOLS OR PUBLIC BATHING PLACES; AND AMENDING SECTIONS 50-53-102, 50-53-107, 50-53-201, AND 50-53-209, MCA

195

94 (House Bill No. 72; Mendenhall) GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; CLARIFYING THE FEDERAL

TITLECONTENTS

EXEMPTION FROM THE TERM "EMPLOYMENT"; REMOVING THE TIME LIMITATIONS FOR EXPENDITURES OF FUNDS RECEIVED PURSUANT TO SECTIONS 903 AND 904 OF THE SOCIAL SECURITY ACT FOR ADMINISTRATIVE EXPENSES; PROVIDING THAT CERTAIN INDIVIDUALS CALLED TO ACTIVE MILITARY DUTY MAY NOT BE DISQUALIFIED FOR UNEMPLOYMENT BENEFITS; PROVIDING THAT THE EDUCATION REQUIREMENT TO REQUALIFY FOR UNEMPLOYMENT BENEFITS RUNS FROM THE DATE OF THE ACT THAT CAUSED DISQUALIFICATION RATHER THAN THE DATE OF ENROLLMENT; AMENDING SECTIONS 39-51-204, 39-51-404, AND 39-51-2302, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 198

95 (House Bill No. 117; Kaufmann) GENERALLY CLARIFYING THE UNEMPLOYMENT INSURANCE TAX LAWS; CLARIFYING THAT THE DEPARTMENT OF REVENUE MAY ISSUE SUMMONS PENALTIES FOR FAILURE OF AN EMPLOYER TO SUBMIT WAGE INFORMATION OR PAY WITHHOLDING TAXES ON TIME; CLARIFYING THE DETERMINATION OF PENALTIES AND INTEREST FOR FAILURE OF AN EMPLOYER TO FILE UNEMPLOYMENT INSURANCE REPORTS OR MAKE PAYMENTS; AMENDING SECTIONS 15-30-209, 39-51-1206, AND 39-51-1301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 203

96 (House Bill No. 166; Wanzenried) CLARIFYING THAT A PLEA OF GUILTY OR NOLO CONTENDERE MUST BE ACCEPTED UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 46-16-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 205

97 (House Bill No. 325; Witt) INCREASING THE MAXIMUM INSURANCE COVERAGE FOR STATE BOARD OF HAIL INSURANCE POLICIES; AMENDING SECTIONS 80-2-208 AND 80-2-244, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 206

98 (House Bill No. 378; Small-Eastman) AMENDING THE DEFINITION OF "NATIVE PLANT"; AND AMENDING SECTIONS 7-22-2101 AND 80-7-701, MCA 207

99 (House Bill No. 427; Gutsche) REVISING LAWS RELATING TO AIR QUALITY; CLARIFYING CERTAIN AIR QUALITY PERMIT APPLICATIONS THAT ARE SUBJECT TO DEPARTMENT OF ENVIRONMENTAL QUALITY ACTION WITHIN 60 DAYS AFTER THE DEPARTMENT'S RECEIPT OF THE APPLICATION; PROVIDING THAT THE DEPARTMENT HAS 75 DAYS FROM THE RECEIPT OF CERTAIN AIR QUALITY PERMIT APPLICATIONS TO TAKE ACTION; REQUIRING THAT THE DEPARTMENT PREPARE A SINGLE ENVIRONMENTAL REVIEW FOR CERTAIN PERMIT APPLICATIONS; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT A RULE THAT PROVIDES FOR A 30-DAY PUBLIC COMMENT PERIOD ON CERTAIN PERMIT APPLICATIONS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 208

100 (House Bill No. 450; Newman) INCREASING CERTAIN FEES FOR THE CLERK OF DISTRICT COURT; AMENDING SECTION 25-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE. 214

101 (House Bill No. 542; Franklin) REVISING THE DEFINITION OF "OCCUPATIONAL THERAPY" BY MODIFYING THE DESCRIPTION OF THE TYPE OF INDIVIDUAL FOR WHOM OCCUPATIONAL THERAPY IS INTENDED AND BY MODIFYING THE TYPE OF INTERVENTIONS THAT ARE COVERED BY THE DEFINITION OF OCCUPATIONAL THERAPY; DEFINING "TOPICAL MEDICATIONS"; REVISING

	OCCUPATIONAL THERAPY TECHNIQUES INVOLVING SOUND OR ELECTRICAL PHYSICAL AGENT MODALITY DEVICES AND THE EDUCATIONAL REQUIREMENTS FOR THE USE OF THE TECHNIQUES; PROVIDING FOR THE APPLICATION AND ADMINISTRATION OF TOPICAL MEDICATIONS; PROVIDING FOR THE ADOPTION OF PROTOCOLS WITH RESPECT TO TOPICAL MEDICATIONS; AND AMENDING SECTIONS 37-24-103 AND 37-24-106, MCA	216
102	<i>(Senate Bill No. 3; Harrington)</i> ELIMINATING THE REQUIREMENT THAT THE CLERKS OF THE DISTRICT COURTS AND THE CLERK OF THE SUPREME COURT COMPILE AND MAKE AVAILABLE CERTAIN INFORMATION RELATING TO SENTENCING IN CRIMINAL CASES; REPEALING SECTION 46-18-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	220
103	<i>(Senate Bill No. 14; McCarthy)</i> EXTENDING THE PERIOD FOR SUSPENSION OF ADJUDICATION PROCEEDINGS DURING NEGOTIATIONS OF FEDERAL INDIAN AND NON-INDIAN RESERVED WATER RIGHTS; AMENDING SECTIONS 85-2-217 AND 85-2-702, MCA; AND PROVIDING AN EFFECTIVE DATE.	220
104	<i>(Senate Bill No. 17; McGee)</i> PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE FOR ALL LEGISLATION ENACTED DURING A SPECIAL SESSION UNLESS A DIFFERENT TIME IS PRESCRIBED IN THE ENACTING LEGISLATION; AMENDING SECTION 1-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	222
105	<i>(Senate Bill No. 21; McNutt)</i> GENERALLY REVISING THE MONTANA BANK ACT; ELIMINATING THE PENALTY FOR A BANK'S PURCHASE OR LOAN OF ITS OWN CAPITAL STOCK; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO ENTER INTO AGREEMENTS WITH OTHER STATES DIVIDING SUPERVISORY RESPONSIBILITIES FOR CERTAIN ASPECTS OF INTERSTATE BANKING; REMOVING THE PROHIBITION ON THE USE OF THE WORDS "TRUST" AND "TRUSTEE" BY CERTAIN NONLICENSED ENTITIES; REMOVING CERTAIN RESTRICTIONS ON A BANK'S ABILITY TO BORROW MONEY; ESTABLISHING REQUIREMENTS FOR THE BUSINESS PLAN NEEDED BY BANKS TO HOLD REAL ESTATE FOR FUTURE USE; AND AMENDING SECTIONS 32-1-335, 32-1-370, 32-1-402, 32-1-412, AND 32-1-423, MCA.	222
106	<i>(Senate Bill No. 27; Johnson)</i> PROVIDING THAT ONLY INCOME FROM ACTUAL GAINS AND LOSSES BE TRANSFERRED TO THE NOXIOUS WEED STATE SPECIAL REVENUE FUND; AMENDING SECTIONS 80-7-814 AND 80-7-816, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	226
107	<i>(Senate Bill No. 32; Mahlum)</i> REVISING STATE LOTTERY FINGERPRINT REQUIREMENTS TO MEET CRITERIA REQUIRED BY THE FEDERAL BUREAU OF INVESTIGATION AS A PREREQUISITE TO FINGERPRINT CHECKS BY THE BUREAU; AMENDING SECTIONS 23-7-306 AND 23-7-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	227
108	<i>(Senate Bill No. 33; Cobb)</i> CLARIFYING THAT ONLY PERMISSIBLE FIREWORKS MAY BE SOLD DURING AUTHORIZED TIME PERIODS; AMENDING SECTION 50-37-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	229
109	<i>(Senate Bill No. 38; Mahlum)</i> REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO PROVIDE FORMS, MANUALS, AND ELECTION LAWS ELECTRONICALLY; REMOVING THE STATE'S	

OBLIGATION TO PAY FOR PAPER COPIES BUT REQUIRING THE STATE TO PROVIDE PAPER COPIES UPON REQUEST; AND AMENDING SECTION 13-37-117, MCA; AND PROVIDING AN EFFECTIVE DATE 230

110 (*Senate Bill No. 40; Mahlum*) PROVIDING FOR COORDINATION OF THE FILING, PROCESSING, AND GRANTING OF ALCOHOLIC BEVERAGE AND GAMBLING LICENSES APPLICATIONS; ALLOWING THE DEPARTMENT OF REVENUE TO CONTRACT WITH THE DEPARTMENT OF JUSTICE FOR THE RECEIPT AND PROCESSING OF ALCOHOLIC BEVERAGE LICENSE APPLICATIONS; REVISING ALCOHOLIC BEVERAGE INVESTIGATIVE PROCEDURES; REQUIRING ALCOHOLIC BEVERAGE AND GAMBLING LICENSE APPLICANTS TO SUBMIT FINGERPRINTS FOR PURPOSES OF A BACKGROUND INVESTIGATION; PROVIDING ADDITIONAL GROUNDS FOR TOLLING THE TIME PERIOD WITHIN WHICH AN ALCOHOLIC BEVERAGE LICENSE APPLICATION DETERMINATION MUST BE MADE; AMENDING SECTIONS 16-1-106, 16-1-302, 16-1-304, 16-4-207, 16-4-402, 16-4-406, 16-4-420, 23-5-119, AND 23-5-177, MCA; REPEALING SECTION 16-4-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 230

111 (*House Bill No. 71; Waitschies*) ELIMINATING THE TERMINATION DATE ON THE DEPARTMENT OF TRANSPORTATION'S AUTHORITY TO STOP AND INSPECT DIESEL-POWERED VEHICLES SUSPECTED OF ILLEGALLY USING DYED FUEL; REPEALING SECTION 2, CHAPTER 206, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 244

112 (*House Bill No. 264; Gibson*) ALLOWING A BOARD OF COUNTY COMMISSIONERS TO REQUIRE COUNTY OFFICERS TO SUPERVISE STAFF IN A MANNER THAT COMPLIES WITH COUNTY PERSONNEL POLICIES AND PROCEDURES; AND AMENDING SECTION 7-4-2110, MCA. 244

113 (*Senate Bill No. 5; Tash*) INCREASING TO \$30 MILLION THE AUTHORITY TO ISSUE GENERAL OBLIGATION BONDS TO MAKE LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTION 85-1-624, MCA; AND PROVIDING AN EFFECTIVE DATE 244

114 (*Senate Bill No. 10; Grimes*) GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 58TH LEGISLATURE; AMENDING SECTIONS 1-11-102, 2-2-106, 2-7-501, 2-15-114, 2-17-512, 3-2-605, 3-10-207, 3-20-103, 5-5-227, 7-1-202, 7-4-2502, 7-6-611, 7-6-612, 7-14-112, 7-15-4283, 7-15-4288, 7-32-2128, 13-35-226, 15-6-138, 15-7-102, 15-7-307, 15-23-703, 15-30-106, 15-30-111, 15-30-121, 15-30-136, 15-30-201, 15-30-301, 15-31-102, 15-31-114, 15-31-150, 15-31-404, 15-31-405, 15-32-405, 15-36-324, 15-50-205, 15-50-206, 15-70-201, 15-72-102, 16-11-101, 17-4-106, 17-5-703, 17-5-1102, 17-5-1103, 17-5-1111, 17-7-140, 19-1-102, 19-2-303, 19-2-405, 19-2-408, 19-3-2117, 19-5-902, 19-6-711, 19-9-1013, 19-9-1204, 19-13-1011, 19-20-101, 19-21-203, 19-21-214, 19-50-102, 19-50-103, 20-9-344, 20-10-205, 20-25-301, 20-25-427, 23-1-105, 23-2-809, 25-13-402, 27-1-732, 31-1-704, 31-2-106, 33-20-1317, 37-7-602, 37-24-104, 37-24-303, 39-10-204, 39-51-2501, 40-5-906, 40-5-909, 41-3-439, 41-5-103, 41-5-215, 41-5-216, 42-10-101, 45-5-503, 45-5-603, 45-9-101, 45-9-102, 45-9-103, 45-9-110, 45-10-107, 46-18-242, 46-23-1004, 46-24-211, 50-2-111, 50-4-502, 50-4-504, 50-4-505,

50-5-101, 50-5-301, 50-60-313, 52-1-103, 53-2-103, 53-3-115, 53-4-221, 53-4-222, 53-4-232, 53-4-601, 53-4-609, 53-18-101, 53-21-186, 53-30-403, 61-3-103, 61-3-570, 61-3-736, 61-8-906, 69-8-104, 69-8-501, 70-24-436, 72-16-607, 75-11-302, 75-20-301, 76-6-109, 77-6-114, 80-7-814, 80-8-120, 81-6-105, 85-20-1004, 85-20-1005, 85-20-1007, 87-1-209, 87-1-221, 90-6-127, AND 90-6-715, MCA, SECTION 17, CHAPTER 414, LAWS OF 2001, AND SECTION 5, CHAPTER 522, LAWS OF 2001; AND REPEALING SECTIONS 5-18-107, 46-23-1033, 50-4-312, AND 53-2-303, MCA. 245

115 *(Senate Bill No. 31; Cobb)* CLARIFYING THAT THE STATUTORY MILL LEVY LIMIT DOES NOT APPLY TO ANY LOCAL GOVERNMENT JUDGMENT LEVY; AND AMENDING SECTION 15-10-420, MCA 381

116 *(Senate Bill No. 49; Shea)* PROHIBITING THE DISCLOSURE OF MILITARY DISCHARGE CERTIFICATES TO UNAUTHORIZED INDIVIDUALS; AMENDING SECTIONS 2-6-401 AND 7-4-2614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 383

117 *(Senate Bill No. 88; Bales)* PROVIDING INSTRUCTION FOR THE RENUMBERING AND CODIFICATION OF SECTION 85-2-521, MCA, CONCERNING REQUIREMENTS FOR COAL BED METHANE WELLS 384

118 *(Senate Bill No. 94; Stonington)* PROVIDING FOR THE MULTIAGENCY CHILDREN'S SERVICES SYSTEM OF CARE INITIATIVE FOR HIGH-RISK CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCE TO BUILD STATE AND COMMUNITY CAPACITY TO SUPPORT THE APPROPRIATE CARE AND TREATMENT OF HIGH-RISK CHILDREN IN THE LEAST RESTRICTIVE AND MOST APPROPRIATE SETTING; AMENDING SECTIONS 52-2-301, 52-2-302, 52-2-303, 52-2-304, AND 52-2-308, MCA; REPEALING SECTIONS 52-2-305, 52-2-306, AND 52-2-307, MCA; AND PROVIDING AN EFFECTIVE DATE. 384

119 *(House Bill No. 79; Jackson)* PROVIDING THAT AN INDIVIDUAL OR A NONPROFIT ORGANIZATION IS NOT LIABLE FOR CIVIL DAMAGES RESULTING FROM THE INDIVIDUAL'S OR ORGANIZATION'S PLACEMENT OF A SIGN OR MARKER WARNING OF A HAZARD IN WATER THAT IS UNDER THE JURISDICTION OF THE STATE AND THAT IS LEGALLY ACCESSIBLE TO THE PUBLIC; PROVIDING CRITERIA FOR THE PLACEMENT OF THE SIGNS OR MARKERS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO INFORM THE PUBLIC OF THE PLACEMENT, USE, AND SIGNIFICANCE OF WATER HAZARD SIGNS AND MARKERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 388

120 *(House Bill No. 178; Fritz)* AUTHORIZING AN EMPLOYER TO EMPLOY A CERTIFIED TEACHER, SPECIALIST, OR ADMINISTRATOR WHO HAS BEEN RECEIVING A RETIREMENT ALLOWANCE FOR AT LEAST 12 MONTHS TO BE REEMPLOYED WITHOUT THE LOSS OR INTERRUPTION OF TEACHER RETIREMENT BENEFITS; DEFINING "EMPLOYER"; REQUIRING AN EMPLOYER TO REPORT MONTHLY EMPLOYMENT DATA TO THE OFFICE OF PUBLIC INSTRUCTION AND THE TEACHERS' RETIREMENT SYSTEM; REQUIRING A REPORT BY THE OFFICE OF PUBLIC INSTRUCTION AND THE TEACHERS' RETIREMENT SYSTEM TO THE 2005 LEGISLATURE; AMENDING SECTION 19-20-804, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 389

121 *(House Bill No. 212; Shockley)* ELIMINATING THE REQUIREMENT THAT AN AWARD OF PUNITIVE DAMAGES MUST BE UNANIMOUS

TITLE CONTENTS

AS TO LIABILITY AND AMOUNT; AMENDING SECTION 27-1-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 392

122 *(House Bill No. 326; Newman)* INCREASING THE ALLOWABLE TIME PERIOD FOR AUTHORIZATION OF A TEMPORARY CHANGE OF A WATER APPROPRIATION RIGHT IN THE UPPER CLARK FORK RIVER BASIN FROM 10 YEARS TO UP TO 30 YEARS UNDER CERTAIN CONDITIONS; AMENDING SECTION 85-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . . 393

123 *(House Bill No. 490; Buzzas)* REVISING THE REQUIREMENT THAT A TAXPAYER FILE, FOR THE PURPOSE OF CLAIMING AN ADDITIONAL INCOME TAX EXEMPTION, WRITTEN DOCUMENTATION OF A DEPENDENT'S PERMANENT DISABILITY; PROVIDING THAT WRITTEN DOCUMENTATION OF A DEPENDENT'S PERMANENT DISABILITY BY A LICENSED PHYSICIAN REMAINS IN EFFECT IN SUBSEQUENT TAX YEARS FOR THE PURPOSE OF CLAIMING THE ADDITIONAL EXEMPTION; REQUIRING THE TAXPAYER TO INFORM THE DEPARTMENT OF REVENUE CONCERNING A CHANGE IN THE DEPENDENT'S ELIGIBILITY FOR THE ADDITIONAL EXEMPTION; ALLOWING THE DEPARTMENT OF REVENUE TO INQUIRE ABOUT THE DEPENDENT'S ELIGIBILITY FOR THE ADDITIONAL EXEMPTION; AMENDING SECTION 15-30-115, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE 396

124 *(House Bill No. 552; Ryan)* ALLOWING AN AFFILIATED GROUP THAT FILES A CONSOLIDATED RETURN AN AUTOMATIC 6-MONTH EXTENSION OF TIME FOR FILING A RETURN; AMENDING SECTION 15-31-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 396

125 *(Senate Bill No. 78; McCarthy)* CLARIFYING WHEN A BOARD OF LAND COMMISSIONERS OR A DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ACTION UNDER TITLE 77, MCA, BECOMES A FINAL AGENCY ACTION UNDER THE MONTANA ENVIRONMENTAL POLICY ACT; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 398

126 *(House Bill No. 32; Golie)* ALLOWING THE HUNTING OF MOUNTAIN LIONS DURING WINTER OPEN SEASON WITH THE AID OF A DOG OR DOGS; ALLOWING THE HUNTING OF BOBCATS DURING TRAPPING SEASON WITH THE AID OF A DOG OR DOGS; ESTABLISHING A TRAINING SEASON DURING WHICH MOUNTAIN LIONS AND BOBCATS MAY BE PURSUED WITH A DOG OR DOGS; CREATING A CLASS D-3 RESIDENT HOUND TRAINING LICENSE AND ESTABLISHING THE CONDITIONS AND FEE FOR THE LICENSE; AMENDING SECTION 87-3-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 402

127 *(House Bill No. 55; Facey)* EXPANDING THE AUTHORITY OF THE FISH, WILDLIFE, AND PARKS COMMISSION TO ADOPT RULES RESTRICTING NONRESIDENT MOUNTAIN LION HUNTERS IN ALL HUNTING DISTRICTS THAT QUALIFY AND ELIMINATING THE TERMINATION DATE FOR THIS AUTHORITY; AMENDING SECTION 87-1-301, MCA; AND REPEALING SECTION 3, CHAPTER 575, LAWS OF 2001 403

128 *(House Bill No. 89; Olson)* EXTENDING THE SCHEDULE FOR COMPLETING TOTAL MAXIMUM DAILY LOADS FOR STREAMS LISTED IN 1997; AND AMENDING SECTION 75-5-703, MCA 406

MONTANA SESSION LAWS 2003

xx

- 129 *(House Bill No. 97; Jent)* DEFINING "TAXIDERMIST"; INCREASING THE ANNUAL TAXIDERMIST'S LICENSE FEE FROM \$15 TO \$50; AND AMENDING SECTION 87-4-201, MCA. 408
- 130 *(House Bill No. 135; Andersen)* AUTHORIZING A SCHOOL DISTRICT TO USE ITS TUITION FUND TO PAY THE COSTS FOR A RESIDENT STUDENT WHO ENROLLS IN A DAY-TREATMENT PROGRAM UNDER AN APPROVED INDIVIDUALIZED EDUCATION PROGRAM AT A PRIVATE, NONSECTARIAN SCHOOL LOCATED IN OR OUTSIDE OF THE STUDENT'S RESIDENT DISTRICT; AMENDING SECTION 20-5-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 409
- 131 *(House Bill No. 142; Devlin)* REQUIRING THE STATE OFFICIAL RESPONSIBLE FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT TO CONSULT WITH ANY LOCAL GOVERNMENT THAT MAY BE DIRECTLY IMPACTED BY A PROJECT; AMENDING SECTIONS 75-1-104 AND 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 411
- 132 *(House Bill No. 198; Lambert)* CLARIFYING THE LANGUAGE IN STATEMENTS OF IMPLICATION FOR BALLOT MEASURES; PROVIDING THAT STATEMENTS OF IMPLICATION MUST BE WRITTEN SO THAT A POSITIVE VOTE INDICATES SUPPORT FOR THE MEASURE AND A NEGATIVE VOTE INDICATES OPPOSITION TO THE MEASURE; AND AMENDING SECTION 13-27-312, MCA 415
- 133 *(House Bill No. 215; Brueggeman)* STANDARDIZING THE FEE FOR REINSTATEMENT OF A DRIVER'S LICENSE OR DRIVING PRIVILEGE AFTER SUSPENSION OR REVOCATION BY INCREASING THE FEE FOR REINSTATEMENT AFTER CERTAIN SUSPENSIONS OR REVOCATIONS FROM \$25 TO \$100; EXEMPTING THE HOLDER OF A COMMERCIAL DRIVER'S LICENSE FROM THE STANDARDIZED REINSTATEMENT FEE; AMENDING SECTIONS 61-5-215 AND 61-5-216, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 416
- 134 *(House Bill No. 250; Morgan)* REVISING THE DESIGN OF LICENSE PLATES FOR RECIPIENTS OF A PURPLE HEART MEDAL; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 417
- 135 *(House Bill No. 311; Stoker)* INCLUDING EGGNOG IN THE DEFINITION OF "CLASS I MILK" INSTEAD OF IN THE DEFINITION OF "CLASS II MILK" TO CORRELATE WITH FEDERAL STANDARDS; REQUIRING THE DEPARTMENT OF LIVESTOCK TO ASSESS A FEE FOR ALL CLASSES OF MILK SOLD BY A PERSON LICENSED BY THE DEPARTMENT TO BE USED FOR THE ADMINISTRATION OF THE MILK INSPECTION AND MILK DIAGNOSTIC LABORATORY FUNCTIONS OF THE DEPARTMENT; PROVIDING THAT THE FEE MUST BE ESTABLISHED COMMENSURATE WITH COSTS OF THE PROGRAM; REQUIRING LICENSEES TO REPORT TO THE DEPARTMENT ON A MONTHLY BASIS THE VOLUME OF MILK PRODUCED; AMENDING SECTIONS 81-23-101 AND 81-23-202, MCA; AND PROVIDING AN EFFECTIVE DATE. 428
- 136 *(House Bill No. 126; Fritz)* PROVIDING FOR THE DISPOSITION OF CIVIL FINES, COSTS, AND FEES RECOVERED UNDER CERTAIN CONSUMER PROTECTION AND UNFAIR TRADE PRACTICES LAWS; PROVIDING FOR THE USE OF THE MONEY TO FUND CONSUMER PROTECTION FUNCTIONS; AND PROVIDING AN EFFECTIVE DATE

TITLECONTENTS

137 *(House Bill No. 144; Harris)* REVISING CERTAIN UNDERGROUND STORAGE TANK LAWS; INCREASING THE TIME LIMIT FOR SUBMITTING CLEANUP EXPENSE REIMBURSEMENT REQUESTS; AMENDING DEFINITIONS; CHANGING THE ANNUAL TANK REGISTRATION FEES; REVISING REQUIREMENTS FOR COMPLIANCE INSPECTIONS AND PERMITS; AMENDING SECTIONS 75-11-307, 75-11-503, 75-11-505, AND 75-11-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 430

138 *(House Bill No. 164; Callahan)* REVISING CERTAIN PROVISIONS RELATED TO PERMANENT TOTAL DISABILITY BENEFITS; REMOVING THE PROVISIONS LIMITING A WORKER TO A MAXIMUM OF 10 BENEFIT ADJUSTMENTS AND LIMITING THE ADJUSTMENT PERCENTAGE INCREASE TO 3 PERCENT; AMENDING SECTION 39-71-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 437

139 *(House Bill No. 172; Gallik)* EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

140 *(House Bill No. 180; Clark)* ALLOCATING LIQUOR LICENSE FEES AND BEER AND WINE TAX REVENUE TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; STATUTORILY APPROPRIATING FUNDS FOR DISTRIBUTION TO STATE-APPROVED PRIVATE AND PUBLIC CHEMICAL DEPENDENCY PROGRAMS FOR GRANTS AND FOR TREATMENT OF PERSONS WITH CO-OCCURRING SERIOUS MENTAL ILLNESS AND CHEMICAL DEPENDENCY; AMENDING SECTIONS 17-7-502, 53-24-108, 53-24-204, AND 53-24-206, MCA; AND PROVIDING AN EFFECTIVE DATE. 438

141 *(House Bill No. 240; Shockley)* PROVIDING THAT THE WRITTEN JUDGMENT IN A CRIMINAL CASE MUST BE ENTERED ON THE RECORD WITHIN 30 DAYS AFTER ORAL PRONOUNCEMENT OF THE DISPOSITION OF THE CASE; REQUIRING AN ORDER SIGNED BY THE SENTENCING JUDGE ON THE DATE OF ORAL PRONOUNCEMENT OF SENTENCE STATING THAT THE DEFENDANT IS SENTENCED TO THAT PLACE FOR IMPRISONMENT, COMMITMENT, PLACEMENT, OR EXECUTION, AS THE CASE MAY BE; PROVIDING THAT THE ORDER IS AUTHORITY FOR THAT PLACE TO HOLD THE DEFENDANT PENDING RECEIPT BY THAT PLACE OF A COPY OF THE WRITTEN JUDGMENT; AND AMENDING SECTIONS 46-18-116 AND 46-19-101, MCA 443

142 *(House Bill No. 246; Harris)* REQUIRING A PEACE OFFICER WHO IS ABOUT TO INTERROGATE A PERSON WHO IS IN CUSTODY TO GIVE THE PERSON THE MIRANDA WARNING 444

143 *(House Bill No. 280; Wanzenried)* ALLOWING FOR THE USE OF ORIGINAL MONTANA LICENSE PLATES ON MOTOR VEHICLES THAT ARE 25 YEARS OLD OR OLDER AND THAT ARE USED FOR GENERAL TRANSPORTATION PURPOSES; REQUIRING PERMANENT REGISTRATION OF GENERAL TRANSPORTATION COLLECTOR'S ITEM VEHICLES; DEFINING "GENERAL TRANSPORTATION COLLECTOR'S ITEM"; AND AMENDING SECTIONS 61-3-412 AND 61-3-562, MCA 445

144 *(House Bill No. 305; Peterson)* PROVIDING A STATUTORY DEFINITION OF "CURRENT TERM" AS USED IN MONTANA'S CONSTITUTIONAL PROVISION ON TERM LIMITS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 448

145 *(House Bill No. 339; Pattison)* CLARIFYING WHICH COUNTIES MUST HAVE COUNTY AUDITORS AND WHICH COUNTIES MAY HAVE COUNTY AUDITORS; ALLOWING COMMISSIONERS IN CERTAIN COUNTIES THE DISCRETIONARY AUTHORITY TO PROVIDE FOR AN ELECTED OR APPOINTED COUNTY AUDITOR; AMENDING SECTION 7-6-2401, MCA; AND REPEALING SECTION 7-6-2402, MCA 448

146 *(House Bill No. 402; Parker)* INCREASING THE MAXIMUM IMPRISONMENT PENALTIES AND REQUIRING OFFENDER REGISTRATION FOR THE CRIME OF OPERATING AN UNLAWFUL CLANDESTINE ILLEGAL DRUG LABORATORY; AND AMENDING SECTIONS 45-9-132 AND 46-23-502, MCA 449

147 *(House Bill No. 436; Olson)* ELIMINATING COMPLIANCE WITH THE MONTANA ENVIRONMENTAL POLICY ACT FOR STATE LAND LEASES THAT ARE SUBJECT TO FURTHER PERMITTING REQUIREMENTS; AMENDING SECTION 77-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 450

148 *(House Bill No. 455; Lake)* PROVIDING FOR THE INSPECTION AND REGULATION OF NONCOMMERCIAL FEEDS; CLARIFYING THAT THE DEPARTMENT OF AGRICULTURE HAS ACCESS TO PREMISES IN ADDITION TO COMMERCIAL ESTABLISHMENTS TO CONDUCT FEED INSPECTIONS FOR THE PURPOSE OF PROTECTING HUMAN AND ANIMAL HEALTH AND SAFETY; AMENDING SECTIONS 80-9-101 AND 80-9-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 451

149 *(House Bill No. 493; Branae)* EXEMPTING FROM THE DEFINITION OF "PROFESSIONAL EMPLOYER ARRANGEMENT" HEALTH CARE FACILITIES THAT PROVIDE THEIR OWN EMPLOYEES TO PERFORM SERVICES AT AND ON BEHALF OF OTHER HEALTH CARE FACILITIES AND AT AND ON BEHALF OF PRIVATE OFFICES OF OTHER LICENSED HEALTH CARE WORKERS; EXEMPTING HEALTH CARE FACILITIES FROM THE DEFINITION OF "PROFESSIONAL EMPLOYER ORGANIZATION"; AND AMENDING SECTION 39-8-102, MCA. 454

150 *(House Bill No. 562; Ballantyne)* REVISING THE LAWS RELATING TO A CUSTOMER'S TELECOMMUNICATIONS CARRIER; PROVIDING THAT AN ELECTRONIC SIGNATURE MAY BE USED TO AUTHORIZE A CHANGE IN A CUSTOMER'S TELECOMMUNICATIONS CARRIER OR TO AUTHORIZE A CHARGE FOR A SERVICE OR PRODUCT TO BE BILLED ON A CUSTOMER'S BILL; ELIMINATING THE REQUIREMENT THAT A TELECOMMUNICATIONS CARRIER OBTAIN A CUSTOMER'S AUTHORIZATION TO PROVIDE SERVICES TO THE CUSTOMER AS A RESULT OF ACQUIRING THE SUBSCRIBER BASE OF ANOTHER CARRIER; AMENDING SECTIONS 69-3-1302 AND 69-3-1303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 456

151 *(Senate Bill No. 16; Mangan)* REVISING THE LAWS RELATED TO SCHOOL BOUNDARY TRANSFERS; ESTABLISHING CRITERIA, A STANDARD OF PROOF, AND PROCEDURES FOR TERRITORY TRANSFER HEARINGS; AUTHORIZING AN APPEAL OF THE COUNTY SUPERINTENDENT'S DECISION TO THE DISTRICT COURT; AMENDING SECTIONS 20-3-205, 20-6-214, 20-6-215, 20-6-308, AND 20-6-322, MCA; REPEALING SECTIONS 20-6-213, 20-6-309, AND 20-6-320, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 458

152 *(Senate Bill No. 19; Grimes)* GENERALLY REVISING LAWS RELATING TO STATE ASSUMPTION OF DISTRICT COURT COSTS; CLARIFYING

	JURORS' AND WITNESSES' WARRANT PAYMENT PROCESSES; REVISING THE APPOINTING AUTHORITY FOR COURT REPORTERS, JUVENILE PROBATION OFFICERS, AND YOUTH ASSESSMENT OFFICERS; CLARIFYING WORKERS' COMPENSATION REQUIREMENTS FOR INDEPENDENT CONTRACTOR COURT REPORTERS; ELIMINATING STATUTORY PROVISIONS RELATING TO JOB QUALIFICATIONS FOR JUVENILE PROBATION OFFICERS; AMENDING SECTIONS 3-5-510, 3-5-511, 3-5-601, 3-5-902, 3-15-204, 41-5-1701, 41-5-1703, 41-5-1706, AND 41-5-1707, MCA; REPEALING SECTION 41-5-1702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	463
153	<i>(Senate Bill No. 20; Grimes)</i> EXEMPTING COURT REPORTERS APPOINTED AS INDEPENDENT CONTRACTORS FROM THE MONTANA PROCUREMENT ACT; AMENDING SECTION 18-4-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	467
154	<i>(Senate Bill No. 68; Cromley)</i> PROVIDING THAT A CIRCUMSTANCE OR FACT USED TO ENHANCE A PENALTY OR AN AGGRAVATING CIRCUMSTANCE USED TO IMPOSE A DEATH PENALTY MUST BE PLEADED AND ADMITTED OR MUST BE FOUND BY THE TRIER OF FACT BEYOND A REASONABLE DOUBT; AND AMENDING SECTIONS 46-1-401, 46-18-302, 46-18-305, AND 46-18-310, MCA.	469
155	<i>(Senate Bill No. 71; Barkus)</i> REVISING THE DEFINITION OF "LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICE" WITH RESPECT TO ELIGIBILITY FOR AN INCOME TAX CREDIT; REMOVING THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S RULEMAKING AUTHORITY FOR ESTABLISHING EMISSION TESTING AND EMISSION CERTIFICATION STANDARDS FOR LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; AMENDING SECTIONS 15-32-102 AND 15-32-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	471
156	<i>(Senate Bill No. 144; Barkus)</i> GENERALLY REVISING STATE SECURITIES LAWS; MODIFYING THE INDIVIDUALS NOT INCLUDED IN THE DEFINITION OF "SALESPERSON"; PROVIDING FOR A CHARGE OF 50 CENTS FOR EACH PAGE FOR OBTAINING CERTAIN COPIES FROM THE SECURITIES COMMISSIONER; PROVIDING A \$50 FEE FOR AN ISSUER FILING A NAME CHANGE FOR A SERIES, PORTFOLIO, OR OTHER SUBDIVISION OF AN INVESTMENT COMPANY OR SIMILAR ISSUER; REQUIRING THE FILING OF CERTAIN DOCUMENTS WITH RESPECT TO FEDERAL COVERED SECURITIES; AND AMENDING SECTIONS 30-10-103, 30-10-107, 30-10-209, AND 30-10-211, MCA	473
157	<i>(House Bill No. 156; Matthews)</i> REVISING THE ABILITY TO PLACE A YOUTH ADJUDICATED DELINQUENT FOR AN ACT THAT WOULD BE A MISDEMEANOR IF COMMITTED BY AN ADULT IN A STATE YOUTH CORRECTIONAL FACILITY; AND AMENDING SECTION 41-5-1513, MCA.	480
158	<i>(House Bill No. 176; Pattison)</i> PROVIDING FOR THE FUNDING OF ADMINISTRATIVE EXPENSES ASSOCIATED WITH REGIONAL DRINKING WATER SYSTEMS UNDER THE TREASURE STATE ENDOWMENT PROGRAM; MODIFYING THE RESPONSIBILITY FOR ADMINISTRATION OF THE FUNDS; AMENDING SECTION 90-6-715, MCA; AND PROVIDING AN EFFECTIVE DATE	482
159	<i>(House Bill No. 391; Balyeat)</i> CORRECTING INDIVIDUAL AND CORPORATE TAX LAW THAT RELATES TO FEDERAL TAX LAW,	

INCLUDING THE TAX ON LUMP-SUM DISTRIBUTIONS, THE COMMERCIAL OR NET METERING SYSTEM INVESTMENT CREDIT, AND THE SMALL BUSINESS INVESTMENT TAX CREDIT; AMENDING SECTIONS 15-30-106, 15-32-402, AND 15-32-405, MCA; REPEALING SECTIONS 15-30-161, 15-30-162, AND 15-31-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 483

160 (House Bill No. 429; Kasten) ESTABLISHING A PROPERTY TAX EXEMPTION STUDY COMMITTEE; PROVIDING AN APPROPRIATION TO THE COMMITTEE; AND PROVIDING EFFECTIVE DATES 484

161 (House Bill No. 683; Brueggeman) REVISING REQUIREMENTS FOR A CHANGE IN A WATER APPROPRIATION RIGHT; AUTHORIZING A CHANGE IN A WATER APPROPRIATION RIGHT WITHOUT PRIOR APPROVAL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR A REPLACEMENT WELL FOR A MUNICIPAL WELL WHEN THE APPROPRIATION DOES NOT EXCEED 450 GALLONS A MINUTE; AUTHORIZING THE CONSTRUCTION OF CERTAIN REDUNDANT WELLS WITHOUT THE PRIOR APPROVAL OF THE DEPARTMENT, SUBJECT TO CERTAIN REQUIREMENTS; AMENDING SECTION 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 486

162 (Senate Bill No. 45; Gebhardt) INCREASING THE LIMIT ON CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES THAT MAY BE DIRECTLY NEGOTIATED BY A GOVERNMENTAL AGENCY; AMENDING SECTIONS 18-8-212 AND 85-1-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 499

163 (Senate Bill No. 55; Keenan) PROVIDING FOR A 3-MONTH COMMUNITY COMMITMENT UNLESS THERE HAS BEEN EVIDENCE OF A PREVIOUS INVOLUNTARY COMMITMENT FOR INPATIENT TREATMENT IN A MENTAL HEALTH FACILITY; AND AMENDING SECTION 53-21-127, MCA 500

164 (Senate Bill No. 56; Keenan) LIMITING THE PERIOD OF CONFINEMENT FOR A PERSON FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT; REQUIRING THE COURT TO DETERMINE THE MAXIMUM PERIOD OF CONFINEMENT AND TO MAKE SPECIFIC FINDINGS REGARDING VICTIMS; AND AMENDING SECTIONS 46-14-214 AND 46-14-301, MCA. 502

165 (Senate Bill No. 64; Keenan) PROVIDING THAT NOTICE OF THE FILING OF PETITIONS FOR CIVIL COMMITMENT OF PERSONS ALLEGED TO SUFFER FROM A MENTAL DISORDER BE GIVEN TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND ANY MENTAL HEALTH FACILITY TO WHICH THE PETITIONS REQUIRE COMMITMENT; AMENDING SECTION 53-21-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 504

166 (Senate Bill No. 87; Hansen) REMOVING THE DEPARTMENT OF AGRICULTURE'S AUTHORITY TO MAKE GRANTS UNDER THE VERTEBRATE PEST MANAGEMENT PROGRAM; AMENDING SECTION 80-7-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 505

167 (Senate Bill No. 102; McNutt) INCREASING TO 40 YEARS FROM 10 YEARS THE ALLOWABLE LENGTH OF TIME THAT THE DEPARTMENT OF TRANSPORTATION MAY LEASE AIRPORTS OR SIMILAR PROPERTY; AND AMENDING SECTION 67-2-302, MCA . . . 506

TITLE CONTENTS

168 *(House Bill No. 30; Hurwitz)* AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO PERMIT THE INSTALLATION OF ELECTRONIC COMMUNICATION EQUIPMENT AND ELECTRONIC INFORMATIONAL KIOSKS ON A HIGHWAY RIGHT-OF-WAY, INCLUDING A CONTROLLED-ACCESS FACILITY; ALLOWING THE DEPARTMENT TO SET TERMS AND CONDITIONS FOR THE EQUIPMENT OR KIOSKS; ALLOWING A FEE AND PROVIDING FOR THE DEPOSIT OF THE FEE; AND AMENDING SECTION 60-5-110, MCA 507

169 *(House Bill No. 60; McKenney)* PROHIBITING THE GOVERNOR FROM DIRECTING A REDUCTION IN SPENDING FOR THE MONTANA SCHOOL FOR THE DEAF AND BLIND IN THE EVENT OF A PROJECTED GENERAL FUND BUDGET DEFICIT; AMENDING SECTION 17-7-140, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 508

170 *(House Bill No. 656; Bitney)* ELIMINATING THE SAFETY EMPLOYMENT EDUCATION AND TRAINING ADVISORY COMMITTEE; AMENDING SECTIONS 39-71-1501, 39-71-1502, AND 39-71-1503, MCA; REPEALING SECTION 2-15-1708, MCA; AND PROVIDING AN EFFECTIVE DATE 509

171 *(Senate Bill No. 81; Cooney)* AUTHORIZING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO AWARD AN HONORARY HIGH SCHOOL DIPLOMA TO CERTAIN VETERANS WHO DID NOT RECEIVE A DIPLOMA DUE TO MILITARY SERVICE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 510

172 *(Senate Bill No. 190; Bohlinger)* ESTABLISHING CRITERIA FOR WHEN A LICENSED DENTAL HYGIENIST MAY PROVIDE DENTAL HYGIENE PREVENTATIVE SERVICES WITHOUT THE PRIOR AUTHORIZATION OR PRESENCE OF A LICENSED DENTIST; DEFINING "PUBLIC HEALTH FACILITY" AND "PUBLIC HEALTH SUPERVISION"; REQUIRING THE BOARD OF DENTISTRY TO ADOPT RULES DEFINING THE QUALIFICATIONS NECESSARY TO OBTAIN A LIMITED ACCESS PERMIT; REQUIRING A LICENSED DENTAL HYGIENIST PRACTICING UNDER PUBLIC HEALTH SUPERVISION TO OBTAIN A LIMITED ACCESS PERMIT AND TO FOLLOW CERTAIN GUIDELINES; AND AMENDING SECTION 37-4-405, MCA. 511

173 *(Senate Bill No. 202; Johnson)* ALLOWING THE BOARD OF PUBLIC EDUCATION TO USE A PORTION OF THE TEACHER CERTIFICATION FEE FOR ACTIVITIES IN SUPPORT OF THE BOARD'S CONSTITUTIONAL AND STATUTORY DUTIES; AND AMENDING SECTION 20-4-109, MCA 513

174 *(House Bill No. 154; Lenhart)* GENERALLY REVISING PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; REVISING THE POWERS OF THE BOARD; REVISING THE DUTIES OF EMPLOYERS; CLARIFYING METHODS OF PURCHASING SERVICE; CLARIFYING PROVISIONS ON ESTABLISHING AN ARRANGEMENT FOR PAYMENT OF EXCESS BENEFITS; CLARIFYING DATES RELATED TO PURCHASING OUT-OF-STATE PUBLIC TEACHING SERVICE; PROVIDING THAT BENEFITS MUST BE CORRECTED UPON DISCOVERY OF A FORGED SIGNATURE; PROVIDING THAT COST-OF-LIVING INCREASES MUST BE INCLUDED WITH RESPECT TO MAXIMUM BENEFIT AND MAXIMUM COMPENSATION LIMITS; REVISING THE WAITING PERIOD REQUIRED BEFORE RECEIVING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; REVISING PROVISIONS ON TRANSFERRING CREDIT FOR PART-TIME EMPLOYMENT; CLARIFYING PROVISIONS ON RESTORATION OF MEMBERSHIP; ALLOWING BENEFICIARIES TO HAVE CERTAIN

INSURANCE PREMIUMS WITHHELD FROM THEIR BENEFIT PAYMENTS; AMENDING SECTIONS 19-20-101, 19-20-201, 19-20-208, 19-20-212, 19-20-402, 19-20-414, 19-20-705, 19-20-710, 19-20-715, 19-20-718, 19-20-719, 19-20-805, 19-20-905, AND 19-20-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 514

175 (*House Bill No. 621; Sinrud*) REMOVING THE DESIGNATION OF THE MONTANA CHIROPRACTIC LEGAL PANEL AS A STATE AGENCY; AMENDING SECTION 27-12-104, MCA; AND PROVIDING AN EFFECTIVE DATE 524

176 (*House Bill No. 635; Forrester*) REVISING LAWS RELATING TO ABANDONED, WRECKED, AND DISABLED VEHICLES; ALLOWING CERTAIN ABANDONED VEHICLES TO BE DISPOSED OF IN THE SAME MANNER AS JUNK VEHICLES; PERMITTING A QUALIFIED TOW TRUCK OPERATOR TO OBTAIN A CERTIFICATE OF RELEASE AND A CERTIFICATE OF OWNERSHIP FOR CERTAIN ABANDONED VEHICLES; PERMITTING A QUALIFIED OPERATOR TO OBTAIN A CERTIFICATE OF OWNERSHIP FOR CERTAIN WRECKED OR DAMAGED VEHICLES; AND AMENDING SECTIONS 61-12-402, 61-12-404, 61-12-405, AND 61-12-406, MCA 525

177 (*Senate Bill No. 23; Butcher*) PROVIDING THAT COMMODITY PRODUCERS HOLDING BAILMENT CONTRACTS HAVE A FIRST PRIORITY LIEN; AMENDING SECTION 80-4-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 528

178 (*Senate Bill No. 26; Mangan*) GENERALLY REVISING TITLE LOAN LAWS; CLARIFYING THE DEFINITION OF "FINANCIAL INSTITUTIONS"; ESTABLISHING A SPECIAL REVENUE ACCOUNT UNDER THE MONTANA TITLE LOAN ACT TO BE USED BY THE DEPARTMENT OF ADMINISTRATION IN ITS SUPERVISORY CAPACITY; DEFINING "TITLE LOAN"; CREATING A CIVIL PENALTY FOR CERTAIN ACTIONS BY TITLE LENDERS; ALLOWING TITLE LENDERS TO IMPOSE A SERVICE CHARGE FOR INSUFFICIENT FUNDS CHECKS; PROHIBITING A TITLE LENDER FROM HOLDING A TITLE FOR MORE THAN 30 CALENDAR DAYS WITHOUT PERFECTING THE TITLE LENDER'S SECURITY INTEREST; LIMITING CRIMINAL AND CIVIL REMEDIES OF TITLE LENDERS TO THOSE REMEDIES AVAILABLE UNDER THE MONTANA TITLE LOAN ACT; EXCLUDING TITLE LOANS FROM THE DEFINITION OF "CONSUMER LOANS"; REQUIRING A VIOLATION FOR CIVIL REMEDIES TO BE INTENTIONAL; AMENDING SECTIONS 31-1-802, 31-1-803, 31-1-811, 31-1-817, 31-1-825, 31-1-826, AND 32-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE. 528

179 (*Senate Bill No. 36; Grimes*) REQUIRING A DISTRICT COURT TO REQUIRE A WATER COMMISSIONER, UPON APPOINTMENT, TO OBTAIN WORKERS' COMPENSATION INSURANCE; CLARIFYING THAT THE OWNERS AND USERS OF DISTRIBUTED WATER, INCLUDING PERMITTEES AND CERTIFICATE HOLDERS, ARE RESPONSIBLE FOR PAYING A PROPORTIONATE SHARE OF WORKERS' COMPENSATION INSURANCE PURCHASED BY A WATER COMMISSIONER; PROVIDING THAT A WATER COMMISSIONER APPOINTED BY A DISTRICT COURT IS NOT AN EMPLOYEE OF THE JUDICIAL BRANCH, A LOCAL GOVERNMENT, OR A WATER USER; AMENDING SECTION 85-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 532

180 (*Senate Bill No. 70; McNutt*) REQUIRING THAT UNIVERSAL SYSTEM BENEFITS PROGRAMS MONEY DEPOSITED IN STATE SPECIAL REVENUE ACCOUNTS BE EXPENDED IN THE UTILITY SERVICE

	TERRITORY FROM WHICH THE MONEY WAS RECEIVED; REQUIRING THAT, IN ASSESSING UNIVERSAL SYSTEM BENEFITS PROGRAMS FUNDING NEEDS, THE DEPARTMENTS OF ENVIRONMENTAL QUALITY AND PUBLIC HEALTH AND HUMAN SERVICES SOLICIT UTILITY AND PUBLIC COMMENT FROM THE UTILITY SERVICE TERRITORY FROM WHICH THE MONEY WAS RECEIVED; AMENDING SECTION 69-8-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	534
181	<i>(Senate Bill No. 117; Cobb)</i> PROVIDING THAT EXECUTIVE BRANCH AGENCY POLICIES, REGULATIONS, STANDARDS, AND STATEMENTS CONCERNING THE INTERNAL MANAGEMENT OF STATE GOVERNMENT AND NOT AFFECTING PRIVATE RIGHTS OR PROCEDURES AVAILABLE TO THE PUBLIC DO NOT CONSTITUTE RULES FOR PURPOSES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTION 2-4-102, MCA	535
182	<i>(Senate Bill No. 128; Mahlum)</i> AUTHORIZING THE DEPARTMENT OF JUSTICE TO ESTABLISH FEES FOR THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION; PROVIDING FOR THE DEPOSIT AND USE OF THE FEES; CREATING AN EXCEPTION TO BUDGET AMENDMENT REQUIREMENTS TO ALLOW THE DEPARTMENT OF JUSTICE TO INCUR PERSONAL SERVICES COSTS AND OPERATIONAL COSTS IN CONNECTION WITH THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION; AMENDING SECTION 17-7-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	537
183	<i>(Senate Bill No. 131; Barkus)</i> CREATING AN INTERMEDIARY RELENDING PROGRAM WITHIN THE BOARD OF INVESTMENTS; REQUIRING THAT LOAN PROCEEDS BE USED AS MATCHING FUNDS FOR UNITED STATES DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT LOAN PROGRAMS AND OTHER FEDERAL PROGRAMS; PROVIDING TERMS FOR INTEREST RATES AND REPAYMENT; ALLOWING THE BOARD TO PURCHASE A PORTION OF SEASONED LOANS FROM A LOCAL ECONOMIC DEVELOPMENT ORGANIZATION'S REVOLVING LOAN PROGRAM; AMENDING SECTION 17-6-302, MCA; AND PROVIDING AN EFFECTIVE DATE.	539
184	<i>(Senate Bill No. 132; McNutt)</i> PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION TO IMPLEMENT THE 9-1-1 STATEWIDE EMERGENCY TELEPHONE SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	541
185	<i>(Senate Bill No. 160; Cobb)</i> REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEVELOP STRATEGIC PLANS; REQUIRING THE STRATEGIC PLAN TO CONTAIN PERFORMANCE MEASURES; DESCRIBING CRITERIA FOR PERFORMANCE MEASURES; DESCRIBING REQUIREMENTS FOR DATA COLLECTION AND REPORTING; ALLOWING THE LEGISLATIVE AUDIT DIVISION TO PROVIDE CERTAIN INFORMATION; OUTLINING LEGISLATIVE AND AGENCY USE OF PERFORMANCE MEASURES; AND PROVIDING AN EFFECTIVE DATE	542
186	<i>(Senate Bill No. 172; McNutt)</i> PROVIDING THAT A FINANCIAL INSTITUTION THAT ENTERS INTO AN AGREEMENT TO SHARE OR OPERATE ELECTRONIC TERMINALS DOES NOT FORFEIT ITS RIGHTS UNDER FEDERAL OR STATE LAW TO CHARGE CUSTOMERS FEES OR WAIVE ITS OTHER RIGHTS OR OBLIGATIONS THAT EXIST UNDER STATE LAW; AMENDING SECTION 32-6-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	544

187 (*Senate Bill No. 173; McNutt*) MODIFYING THE PROCESS FOR DETERMINING THE DEFINITION OF "SERVICE AREA" FOR FEDERAL UNIVERSAL SERVICE SUPPORT FOR RURAL TELEPHONE COMPANIES; AMENDING SECTION 69-3-840, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 545

188 (*Senate Bill No. 238; Mangan*) CLARIFYING THAT A YOUTH WHO HAS COMMITTED A STATUS OFFENSE MAY NOT BE PLACED IN SECURE DETENTION BY BECOMING A DELINQUENT YOUTH BY VIRTUE OF A PROBATION VIOLATION IN ORDER TO COMPLY WITH FEDERAL LAW; AMENDING SECTION 41-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 546

189 (*Senate Bill No. 257; Cooney*) REQUIRING ADDITIONAL NOTICE OF TIME DEADLINES TO THE COURT IN CHILD ABUSE AND NEGLECT PROCEEDINGS; AND AMENDING SECTIONS 41-3-422 AND 41-3-432, MCA. 551

190 (*House Bill No. 182; Rome*) GENERALLY REVISING OUTDATED REFERENCES PERTAINING TO THE DEPARTMENT OF COMMERCE FOLLOWING ITS 2001 REORGANIZATION; CHANGING THE RESPONSIBILITY FOR MONUMENTATION AND RELATED SURVEY REQUIREMENTS TO THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS; REVISING RULEMAKING AUTHORITY FOR THE OFFICE OF ECONOMIC DEVELOPMENT; AMENDING SECTIONS 2-15-150, 23-5-631, 30-16-303, 50-60-313, 53-2-1203, 76-3-403, AND 90-1-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 555

191 (*House Bill No. 252; Hedges*) CLARIFYING THE APPLICATION OF CAMPAIGN LAWS TO SCHOOL DISTRICTS AND SPECIAL DISTRICTS; EXPANDING THE DEFINITION OF "SPECIAL DISTRICT"; AND AMENDING SECTION 13-37-206, MCA 561

192 (*Senate Bill No. 83; McGee*) AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH A DESIGN-BUILD CONTRACTING PILOT PROGRAM; SETTING A CAP ON THE TOTAL COST OF PROJECTS THAT MAY BE AUTHORIZED UNDER THE PROGRAM; REQUIRING THE DEPARTMENT TO REPORT ON THE PROGRAM TO THE GOVERNOR AND THE 2009 LEGISLATURE; CREATING A DESIGN-BUILD CONTRACTING BOARD; PROVIDING THE PROCEDURE FOR PROSPECTIVE CONTRACTORS TO SUBMIT A PROPOSAL; AMENDING SECTIONS 18-8-204, 18-8-205, 60-2-111, AND 60-2-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 561

193 (*Senate Bill No. 108; McNutt*) GENERALLY REVISING WORKERS' COMPENSATION LAWS; CLARIFYING THAT INSURANCE REQUIREMENTS APPLY ONLY TO WORKERS IN THIS STATE; REDUCING THE LENGTH OF THE INDEPENDENT CONTRACTOR EXEMPTION FROM 3 YEARS TO 2 YEARS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO MAINTAIN A 3-MONTH ADMINISTRATIVE COST BALANCE IN THE UNINSURED EMPLOYERS' FUND; PROVIDING A \$200 PENALTY FOR UNINSURED EMPLOYERS WHO FAIL TO OBTAIN INSURANCE WITHIN 30 DAYS AFTER NOTICE OF THE REQUIREMENT TO OBTAIN WORKERS' COMPENSATION INSURANCE; PROVIDING FOR LATE FEES AND INTEREST WHEN AN EMPLOYER FAILS TO MAKE TIMELY PENALTY AND CLAIM REIMBURSEMENT PAYMENTS; ADDING LATE FEES AND INTEREST TO THE LIEN CREATED FOR AN EMPLOYER'S FAILURE TO PAY PENALTIES OR BENEFIT CLAIMS; PROVIDING A TIME LIMIT FOR PETITIONING THE WORKERS' COMPENSATION COURT AFTER THE MEDIATOR'S REPORT IS

MAILED; PROVIDING FOR RECOVERY OF COLLECTION FEES AND COSTS; CLARIFYING THE DEFINITION OF "PERSON WITH A DISABILITY"; CHANGING THE NOTICE DATE OF YEARLY INSURANCE PLAN ASSESSMENTS FROM APRIL 30 TO MAY 31 OF EACH YEAR; PROVIDING THAT FAILURE TO RECEIVE THE CONCURRENCE OF A REPRESENTATIVE OF THE SUBSEQUENT INJURY FUND FOR COMPROMISE SETTLEMENTS RELIEVES THE FUND OF LIABILITY; REQUIRING THE BOARD OF INVESTMENTS TO INVEST THE MONEY IN THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT; AMENDING SECTIONS 39-71-401, 39-71-503, 39-71-504, 39-71-506, 39-71-520, 39-71-901, 39-71-911, 39-71-915, AND 39-71-1004, MCA; AND PROVIDING AN EFFECTIVE DATE 566

194 (*Senate Bill No. 139; Shea*) REPLACING THE EXISTING INTERSTATE COMPACT ON JUVENILES WITH THE NEW INTERSTATE COMPACT ON JUVENILES; AMENDING SECTION 41-6-101, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE. 576

195 (*Senate Bill No. 151; Mahlum*) GENERALLY REVISING THE MONTANA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT; CLARIFYING THAT THE ACT APPLIES TO INSOLVENT INSURERS AS WELL AS IMPAIRED INSURERS; ESTABLISHING PROCEDURES FOR AN ASSOCIATION TO ELECT TO CONTINUE REINSURANCE; PROVIDING FOR THE DISTRIBUTION OF DEPOSITS PAID TO AN ASSOCIATION; CLARIFYING THE SCOPE OF COVERAGE OF THE ACT; REVISING DEFINITIONS; DEFINING "BENEFIT PLAN", "INSOLVENT INSURER", "MOODY'S CORPORATE BOND YIELD AVERAGE", "PLAN SPONSOR", "PRINCIPAL PLACE OF BUSINESS", "RECEIVERSHIP COURT", "STRUCTURED SETTLEMENT ANNUITY", AND "SUPPLEMENTAL CONTRACT"; REVISING REQUIREMENTS FOR ACCOUNTS MAINTAINED BY AN ASSOCIATION; CLARIFYING THE STANDING AND GENERAL POWERS OF AN ASSOCIATION; CLARIFYING MEETING AND NEGOTIATION REQUIREMENTS; CLARIFYING THE DUTIES AND POWERS OF THE INSURANCE COMMISSIONER; REVISING AN ASSOCIATION'S POWERS PRIOR TO AND DURING THE LIQUIDATION OF A MEMBER INSURER; REVISING ASSIGNMENT AND SUBROGATION PROVISIONS; REVISING BENEFIT LIABILITY OF AN ASSOCIATION; AMENDING SECTIONS 33-10-201, 33-10-202, 33-10-203, 33-10-205, 33-10-206, 33-10-207, 33-10-210, 33-10-215, 33-10-217, 33-10-219, 33-10-220, 33-10-221, 33-10-222, 33-10-223, 33-10-224, 33-10-226, AND 33-10-227, MCA; AND PROVIDING AN EFFECTIVE DATE 595

196 (*House Bill No. 174; Thomas*) GENERALLY REVISING PROFESSIONAL OCCUPATION AND LICENSING LAWS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY MAY, WITH RESPECT TO CERTAIN LICENSING EXAMINATIONS, ALLOW THIRD PARTIES TO PROVIDE EXAMINATION AND GRADING SERVICES; REVISING EXAMINATION AND CERTIFICATE REQUIREMENTS FOR SANITARIANS; REVISING OUTFITTER LICENSES FOR CORPORATIONS, PROPRIETORSHIPS, AND PARTNERSHIPS; REVISING EDUCATION, CERTIFICATION, AND EXAMINATION REQUIREMENTS FOR PUBLIC ACCOUNTANTS; REVISING EXAMINATION REQUIREMENTS FOR REAL ESTATE BROKERS AND SALESPERSONS; REVISING APPLICATION, EXAMINATION, AND CERTIFICATION REQUIREMENTS FOR REAL ESTATE APPRAISERS; REVISING EXAMINATION REQUIREMENTS FOR ARCHITECTS; REVISING APPLICATION, FEE, AND EXAMINATION REQUIREMENTS FOR ENGINEERS AND LAND SURVEYORS;

REVISING FEE AND EXAMINATION REQUIREMENTS FOR ELECTRICIANS; REVISING FEE AND EXAMINATION REQUIREMENTS FOR PLUMBERS; REVISING APPLICATION, FEE, AND LICENSE REQUIREMENTS FOR CONSTRUCTION BLASTERS; REVISING EXAMINATION AND FEE REQUIREMENTS FOR PERSONS OPERATING BOILERS AND STEAM ENGINES; REVISING EXAMINATION AND FEE REQUIREMENTS FOR PERSONS OPERATING HOISTING ENGINES; AMENDING SECTIONS 37-40-302, 37-47-304, 37-50-204, 37-50-305, 37-50-308, 37-50-309, 37-51-303, 37-54-105, 37-54-201, 37-54-302, 37-54-305, 37-65-303, 37-67-303, 37-67-311, 37-68-304, 37-68-305, 37-68-307, 37-68-311, 37-69-304, 37-69-305, 37-69-307, 37-72-303, 37-72-304, 37-72-305, 50-74-312, AND 50-76-104, MCA; AND REPEALING SECTIONS 37-54-304 AND 50-74-310, MCA 615

197 (House Bill No. 312; Lindeen) EXCLUDING SERVICES PERFORMED BY AN INDIVIDUAL AS AN OFFICIAL AT ALL AMATEUR ATHLETIC EVENTS FROM THE DEFINITION OF "EMPLOYMENT" FOR PURPOSES OF THE STATE'S UNEMPLOYMENT COMPENSATION INSURANCE LAWS; AMENDING SECTION 39-51-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 629

198 (House Bill No. 416; Younkin) EXTENDING THE PROTEST PERIOD FOR THE CREATION OR EXTENSION OF A RURAL IMPROVEMENT DISTRICT FROM 15 DAYS TO 30 DAYS; AND AMENDING SECTION 7-12-2109, MCA 632

199 (Senate Bill No. 103; Laible) PROVIDING FOR CONTINGENT FUND TRANSFERS FROM THE ORPHAN SHARE STATE SPECIAL REVENUE ACCOUNT TO THE HAZARDOUS WASTE/CERCLA ACCOUNT AND TO THE ENVIRONMENTAL QUALITY PROTECTION FUND ACCOUNT; PROVIDING FOR THE REPAYMENT OF CONTINGENT FUND TRANSFERS; AMENDING SECTIONS 75-10-621, 75-10-704, AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE. 633

200 (Senate Bill No. 107; Roush) INCREASING THE YEARLY PAYMENT TO A COUNTY FOR ITS JUNK VEHICLE COLLECTION AND GRAVEYARD BUDGET FROM \$1 TO \$1.25 FOR EACH MOTOR VEHICLE UNDER 8,001 POUNDS GROSS VEHICLE WEIGHT; INCREASING THE TOTAL PAYMENT TO COUNTIES WITH FEWER THAN 5,000 MOTOR VEHICLES UNDER 8,001 POUNDS GROSS VEHICLE WEIGHT FROM \$5,000 TO \$6,250; AMENDING SECTION 75-10-534, MCA; AND PROVIDING AN EFFECTIVE DATE. 639

201 (Senate Bill No. 122; Tash) AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO AUTHORIZE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE LICENSES ENTITLING THE HOLDER OF A CLASS A-5, CLASS A-7, OR CLASS B-10 LICENSE TO TAKE A SECOND ELK, WHICH MUST BE ANTLERLESS; ESTABLISHING A FEE AND ELIGIBILITY REQUIREMENTS FOR A CLASS A-9 RESIDENT ANTLERLESS ELK B TAG AND A CLASS B-12 NONRESIDENT ANTLERLESS ELK B TAG; AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ESTABLISH A WAITING PERIOD FOR ELIGIBILITY FOR CERTAIN ANTLERED BULL ELK PERMITS; AMENDING SECTIONS 87-2-104, 87-2-501, 87-2-505, 87-2-702, AND 87-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 639

202 (Senate Bill No. 125; Tester) REVISING SECURITIES LAWS FOR THE PURPOSE OF PROMOTING CAPITAL FORMATION BY CREATING AN

ADDITIONAL EXEMPT TRANSACTION FOR MONTANA-BASED BUSINESSES; AND AMENDING SECTION 30-10-105, MCA 643

203 *(Senate Bill No. 229; Thomas)* PROVIDING THAT, WITH RESPECT TO CERTAIN TYPES OF SURETY BONDS REQUIRED TO BE FURNISHED ON VARIOUS PUBLIC CONTRACTS, THE STATE OR OTHER GOVERNMENTAL AGENCIES MAY NOT REQUIRE THAT THE BONDS BE FURNISHED BY A PARTICULAR SURETY COMPANY OR BY A PARTICULAR INSURANCE PRODUCER FOR A SURETY COMPANY; AND AMENDING SECTIONS 18-1-203, 18-2-201, 18-2-302, AND 18-4-312, MCA 647

204 *(House Bill No. 373; Olson)* REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION LAWS; CLARIFYING THE POLICY AND FINDINGS; CLARIFYING CERTAIN DEFINITIONS AND DEFINING CERTAIN TERMS; REDUCING THE TIME REQUIRED FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO APPROVE OR DISAPPROVE MINOR REVISIONS; MODIFYING PERMIT APPLICATION REQUIREMENTS; CLARIFYING HYDROLOGIC BALANCE RECLAMATION REQUIREMENTS; MODIFYING AREA MINING REQUIREMENTS; MODIFYING THE REQUIREMENTS FOR PLANTING VEGETATION FOLLOWING GRADING OF A DISTURBED AREA; PROVIDING STANDARDS FOR SUCCESSFUL REVEGETATION; CLARIFYING THAT VEGETATION THAT IS PLACED OR SEEDED BECOMES THE PROPERTY OF THE LANDOWNER AFTER THE BOND IS RELEASED; ALLOWING REVISION OF PERMIT AND RECLAMATION PLAN APPLICATIONS IN ORDER TO INCORPORATE THE PROVISIONS OF THIS ACT; AMENDING SECTIONS 82-4-202, 82-4-203, 82-4-221, 82-4-222, 82-4-231, 82-4-232, 82-4-233, 82-4-234, 82-4-235, AND 82-4-236, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 651

205 *(House Bill No. 616; Younkin)* REVISING THE TAX CHANGES TO CONTRIBUTIONS TO QUALIFIED ENDOWMENTS THAT WERE ENACTED DURING THE AUGUST 2002 SPECIAL SESSION; REPEALING THE INCREASES TO THE CREDITS AND DEDUCTIONS FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS FOR FISCAL YEAR 2004; AMENDING SECTION 11, CHAPTER 24, SPECIAL LAWS OF 2002; REPEALING SECTIONS 2, 4, 6, AND 8, CHAPTER 24, SPECIAL LAWS OF 2002; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 676

206 *(Senate Bill No. 100; Grimes)* ELIMINATING THE REQUIREMENT FOR A HEALTH CARE DATABASE; ELIMINATING THE DEFINITION OF THE TERMINATED "HEALTH CARE ADVISORY COUNCIL"; AMENDING SECTIONS 50-4-312, 50-4-504, AND 50-4-505, MCA; REPEALING SECTION 50-4-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 676

207 *(Senate Bill No. 104; Tester)* CLARIFYING THE LAW GOVERNING PER DIEM CHARGES FOR STATE INSTITUTIONS; CHANGING THE TIME FOR THE ANNUAL REVIEW OF THE PER DIEM CHARGE FOR STATE INSTITUTIONS; AMENDING SECTIONS 53-1-401 AND 53-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 678

208 *(House Bill No. 467; Barrett)* PROVIDING THAT NECESSITY MUST BE SHOWN BEFORE CHANGES TO THE EXISTING WATER QUALITY OF CERTAIN WATERS CAN BE PROHIBITED; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO MAKE A WRITTEN FINDING WHEN ACCEPTING A PETITION TO CLASSIFY WATERS AS OUTSTANDING RESOURCE WATERS; PROVIDING CRITERIA FOR THE BOARD OF ENVIRONMENTAL REVIEW'S WRITTEN FINDING; PROVIDING A HEARING PROCESS WHEN THE BOARD OF

ENVIRONMENTAL REVIEW RECEIVES A PETITION FOR RULEMAKING TO CLASSIFY A WATER AS AN OUTSTANDING RESOURCE WATER; PROVIDING THAT THE COSTS OF THE ENVIRONMENTAL IMPACT STATEMENT MUST BE PAID BY THE PETITIONER; AMENDING SECTIONS 75-5-315 AND 75-5-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 679

209 *(House Bill No. 306; Balyeat)* SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IX OF THE MONTANA CONSTITUTION RECOGNIZING AND PRESERVING THE HERITAGE OF MONTANA CITIZENS' OPPORTUNITY TO HARVEST WILD FISH AND WILD GAME ANIMALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 683

210 *(House Bill No. 122; Forrester)* REVISING THE VIDEO GAMBLING MACHINE LAWS TO TAKE INTO ACCOUNT CONNECTION OF MACHINES TO THE AUTOMATED ACCOUNTING AND REPORTING SYSTEM; PROVIDING FOR DEPARTMENT OF JUSTICE TRAINING OF TECHNICIANS WORKING ON OR INSTALLING THE MACHINES; AMENDING SECTIONS 23-5-602, 23-5-610, 23-5-611, 23-5-621, AND 23-5-637, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 683

211 *(House Bill No. 165; Lake)* AUTHORIZING THE STATE LOTTERY COMMISSION TO ENTER INTO AGREEMENTS WITH OTHER COUNTRIES TO OFFER LOTTERY GAMES AND TO ENTER INTO AGREEMENTS WITH AN ASSOCIATION FOR THE PURPOSE OF PARTICIPATING IN MULTISTATE LOTTERY GAMES OR GAMES OFFERED IN OTHER STATES AND OTHER COUNTRIES; AMENDING SECTION 23-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 690

212 *(House Bill No. 262; Fuchs)* CLARIFYING THE POLICY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND PROVIDING LEGISLATIVE INTENT WITH REGARD TO THE MANAGEMENT OF LARGE PREDATORS; ESTABLISHING THAT LARGE PREDATORS MUST BE MANAGED PRIMARILY TO PRESERVE HUNTABLE SPECIES OF LARGE GAME AND TO PROTECT LIVESTOCK, PETS, AND PEOPLE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 691

213 *(House Bill No. 284; Gillan)* PROVIDING THAT A PEACE OFFICER DOES NOT NEED PROBABLE CAUSE TO BELIEVE THAT A PERSON WAS DRIVING UNDER THE INFLUENCE IN ORDER TO REQUEST A TEST OF A PERSON'S BLOOD OR BREATH FOR THE PURPOSE OF DETERMINING ANY MEASURED AMOUNT OR DETECTED PRESENCE OF ALCOHOL OR DRUGS IN THE PERSON'S BODY WHEN THE PERSON HAS BEEN INVOLVED IN A MOTOR VEHICLE ACCIDENT OR COLLISION RESULTING IN SERIOUS BODILY INJURY OR DEATH; AND AMENDING SECTION 61-8-402, MCA 692

214 *(House Bill No. 333; Waitschies)* ALLOWING LOCAL GOVERNMENTS TO RETURN INTEREST FROM INVESTMENTS AND DEPOSITS TO A SPECIFIED FUND IN PROPORTION TO THAT FUND'S PARTICIPATION IN AN INVESTMENT OR DEPOSIT RATHER THAN DEPOSITING THE INTEREST IN THE GENERAL FUND; AMENDING SECTION 7-6-204, MCA; AND PROVIDING AN EFFECTIVE DATE 694

215 *(House Bill No. 350; Cohenour)* EXPANDING THE ABILITY OF HIGHWAY PATROL OFFICERS TO MAKE ARRESTS OF PERSONS IN THE POSSESSION OF DANGEROUS DRUGS OR DRUG PARAPHERNALIA; SUBSTITUTING THE TERM "DANGEROUS

	DRUGS" FOR "NARCOTICS"; AND AMENDING SECTION 44-1-1001, MCA.	694
216	<i>(House Bill No. 420; Lake)</i> DECREASING THE FEE PAID BY COMMERCIAL APPLICATORS, PESTICIDE DEALERS, AND GOVERNMENT AGENCIES FOR THE WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM; REPEALING THE TERMINATION OF THE WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM, THE ASSESSMENT OF FEES FOR FUNDING THE PROGRAM, AND THE DEPOSIT AND USE OF FEES BY THE DEPARTMENT OF AGRICULTURE; AMENDING SECTIONS 80-8-203, 80-8-207, AND 80-8-213, MCA; REPEALING SECTION 14, CHAPTER 465, LAWS OF 1993, AND CHAPTER 362, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	695
217	<i>(House Bill No. 443; Lange)</i> GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; CLARIFYING THE POLICY OF THE MONTANA MAJOR FACILITY SITING ACT; MODIFYING THE DEFINITION OF "CERTIFICATE"; MODIFYING THE INFORMATION REQUIREMENTS FOR APPLICATIONS; ELIMINATING THE REQUIREMENT THAT A COPY OF AN APPLICATION BE SENT TO OTHER LOCAL, STATE, AND FEDERAL GOVERNMENTAL ENTITIES; MODIFYING PUBLIC NOTICE REQUIREMENTS; REVISING THE FILING FEE SCALE; REDUCING CERTAIN TIME REQUIREMENTS OF THE SITING LAWS; QUALIFYING THE USE OF MONTANA ENVIRONMENTAL POLICY ACT DOCUMENTS; INCLUDING ECONOMIC IMPORTANCE AND BENEFITS IN DETERMINING THE SIGNIFICANCE OF A FACILITY'S IMPACT; REVISING THE DEPARTMENT'S APPROVAL CRITERIA FOR CERTAIN FACILITIES; CLARIFYING REQUIREMENTS FOR COMMENCEMENT OF CONSTRUCTION; AMENDING SECTIONS 7-1-111, 69-3-1205, 75-20-102, 75-20-104, 75-20-201, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-223, 75-20-231, 75-20-232, 75-20-301, 75-20-303, 85-2-124, 85-2-607, 85-15-107, AND 90-6-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	698
218	<i>(House Bill No. 548; Jent)</i> ESTABLISHING A FEDERAL SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE SECRETARY OF STATE FOR MONEY RECEIVED UNDER THE FEDERAL HELP AMERICA VOTE ACT OF 2002; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	713
219	<i>(House Bill No. 583; Brown)</i> AUTHORIZING A COUNTY AND A MUNICIPALITY TO ESTABLISH A TRANSPORTATION IMPROVEMENT AUTHORITY	714
220	<i>(House Bill No. 639; Laslovich)</i> PROVIDING THAT FINES FOR VIOLATIONS OF MOTOR VEHICLE OR PARKING REGULATIONS ON A UNIVERSITY SYSTEM CAMPUS BE ASSESSED IN ACCORDANCE WITH A SCHEDULE THAT IS APPROVED BY THE BOARD OF REGENTS; REMOVING THE \$10 PER OFFENSE CAP ON FINES; AND AMENDING SECTION 20-25-312, MCA	716
221	<i>(Senate Bill No. 28; Mangan)</i> GENERALLY REVISING THE LAWS RELATING TO DEFERRED DEPOSIT LOANS; CLARIFYING THE DEFINITION OF "FINANCIAL INSTITUTIONS"; PROVIDING FOR CIVIL PENALTIES FOR CERTAIN VIOLATIONS OF THE MONTANA DEFERRED DEPOSIT LOAN ACT; REQUIRING THE NAME, ADDRESS, AND PHONE NUMBER OF A CONSUMER TO BE INCLUDED ON THE WRITTEN AGREEMENT BETWEEN THE LICENSEE AND CONSUMER WITH RESPECT TO A DEFERRED DEPOSIT LOAN;	

- ESTABLISHING THAT CERTAIN DAMAGES ARE NOT AVAILABLE TO A LICENSEE FOR INSUFFICIENT FUNDS CHECKS OR ELECTRONIC DEDUCTIONS FOR WHICH THERE ARE INSUFFICIENT FUNDS; PROVIDING THAT THE DEFINITION OF "CONSUMER LOAN" DOES NOT INCLUDE A DEFERRED DEPOSIT LOAN; INCREASING THE INSUFFICIENT FUNDS FEE FROM \$15 TO \$30; REQUIRING A VIOLATION FOR CIVIL REMEDIES TO BE INTENTIONAL; AMENDING SECTIONS 31-1-704, 31-1-712, 31-1-721, 31-1-722, 31-1-724, AND 32-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE. 717
- 222 *(Senate Bill No. 75; Stapleton)* PROVIDING FOR THE MONTANA NATIONAL GUARD CIVIL RELIEF ACT; DEFINING TERMS; AUTHORIZING COURTS TO PROVIDE CERTAIN NATIONAL GUARD SERVICE MEMBERS RELIEF FROM CERTAIN CIVIL ACTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 720
- 223 *(Senate Bill No. 84; Cocchiarella)* ELIMINATING THE REQUIREMENT THAT THE BOARD OF OIL AND GAS CONSERVATION REPORT TO THE REVENUE OVERSIGHT COMMITTEE REGARDING ENHANCED RECOVERY PROJECTS, NUMBERS OF HORIZONTALLY COMPLETED WELLS, AND METHODOLOGY FOR DETERMINING OIL PRODUCTION DECLINE RATES; AND REPEALING SECTION 21, CHAPTER 9, SPECIAL LAWS OF NOVEMBER 1993. 721
- 224 *(Senate Bill No. 109; McNutt)* GENERALLY REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; ADDING A PHARMACY TECHNICIAN TO THE BOARD OF PHARMACY; DEFINING "PHYSICIAN"; PROVIDING LICENSING AND OTHER REQUIREMENTS FOR DOCTORS OF OSTEOPATHY AND RECOGNIZING THEIR STATUS AS PHYSICIANS; MODIFYING REQUIREMENTS FOR PHYSICIAN RENEWAL FEES; MODIFYING REQUIREMENTS FOR LICENSE APPLICATIONS FOR DENTISTS; PROVIDING THAT LICENSEES UNDER THE BOARD OF MEDICAL EXAMINERS AND THE BOARD OF DENTISTRY MAY BE REFERRED TO AN IMPAIRMENT PROGRAM; PROVIDING THAT CERTAIN MEDICAL LICENSES THAT ARE NOT TIMELY RENEWED MAY BE CONSIDERED LAPSED RATHER THAN REVOKED; MODIFYING CHIROPRACTIC LICENSING AND EXAMINATION REQUIREMENTS; MODIFYING LICENSE RENEWAL REQUIREMENTS FOR ACUPUNCTURISTS; REMOVING THE LIMITATION ON THE REEXAMINATION ELIGIBILITY PERIOD FOR HEARING AID DISPENSERS; REMOVING THE REQUIREMENT THAT AN INTERNSHIP REQUIREMENT FOR MORTICIANS BE FULFILLED WITHIN THE STATE OF MONTANA; REMOVING A DATE REQUIREMENT FOR MORTICIAN EXAMINATIONS; MAKING THE ADOPTION OF CERTAIN RULES PERTAINING TO MIDWIFERY DISCRETIONARY; ALLOWING MIDWIFERY EXAMINATIONS TO BE PREPARED BY A NATIONAL TESTING ENTITY; MODIFYING OUTDATED LANGUAGE PERTAINING TO DENTURISTS; AMENDING SECTIONS 2-15-1733, 15-6-217, 37-3-102, 37-3-103, 37-3-203, 37-3-303, 37-3-304, 37-3-307, 37-3-313, 37-3-315, 37-3-345, 37-4-301, 37-4-311, 37-4-312, 37-4-402, 37-6-304, 37-12-102, 37-12-302, 37-12-304, 37-13-306, 37-16-403, 37-19-302, 37-19-303, 37-20-302, 37-20-303, 37-26-301, 37-27-105, 37-27-202, 37-29-304, 39-71-116, AND 50-5-105.MCA; REPEALING SECTIONS 37-5-101, 37-5-102, 37-5-301, 37-5-302, 37-5-305, 37-5-307, AND 37-5-312, MCA; AND PROVIDING AN EFFECTIVE DATE 721
- 225 *(Senate Bill No. 121; Glaser)* GENERALLY REVISING THE TAXATION OF PASS-THROUGH ENTITIES AND THEIR OWNERS; TO CLARIFY THAT ALL OWNERS OF PASS-THROUGH ENTITIES WITH MONTANA SOURCE INCOME ARE SUBJECT TO TAX; TO EXTEND THE

	CONSENT, COMPOSITE RETURN, AND WITHHOLDING PROVISIONS TO FOREIGN C. CORPORATIONS AND TO OTHER PASS-THROUGH ENTITY OWNERS; TO PROVIDE A REFUNDABLE CREDIT FOR SECOND-TIER PASS-THROUGH ENTITY OWNERS FOR WITHHELD AMOUNTS REMITTED ON THEIR BEHALF; TO CLARIFY AN INTENT THAT THE PASS-THROUGH ENTITY PROVISIONS NOT OVERRIDE THE MULTISTATE TAX COMPACT; PROVIDING A DEFINITION OF "FOREIGN C. CORPORATION"; AND AMENDING SECTIONS 15-30-101, 15-30-1102, 15-30-1112, AND 15-30-1113, MCA	743
226	<i>(Senate Bill No. 216; Cocchiarella)</i> PROVIDING THAT A FORMER MEMBER OF THE SELF-INSURERS GUARANTY FUND IS LIABLE FOR ASSESSMENTS MADE BY THE FUND IN ANY YEAR FOLLOWING THE DATE THAT THE MEMBER'S STATUS AS A PRIVATE SELF-INSURER IS TERMINATED; REQUIRING A FORMER MEMBER'S ASSESSMENT TO BE BASED ON BENEFITS PAID DURING THE LAST CALENDAR YEAR IMMEDIATELY PRECEDING THE ANNUAL ASSESSMENT; AMENDING SECTION 39-71-2615, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	752
227	<i>(Senate Bill No. 221; Kitzenberg)</i> ALLOWING THE TAKING OF SALMON AND LAKE TROUT BY SPEAR OR GIG IN FORT PECK RESERVOIR DURING CERTAIN TIMES; AND AMENDING SECTION 87-3-204, MCA	753
228	<i>(Senate Bill No. 253; Elliott)</i> CREATING A CLASS B-5 10-DAY NONRESIDENT FISHING LICENSE; ESTABLISHING THE TERMS, USE, AND COST OF THE LICENSE; DIRECTING A PORTION OF THE LICENSE FEE TO THE PURCHASE, OPERATION, DEVELOPMENT, AND MAINTENANCE OF FISHING ACCESSES; AMENDING SECTIONS 87-1-605, 87-2-104, 87-2-306, 87-2-805, AND 87-3-236, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	755
229	<i>(Senate Bill No. 398; Cromley)</i> CLARIFYING THAT FINGERPRINT AND OTHER CRIMINAL HISTORY RECORD INFORMATION RELATING TO APPLICANTS FOR ADMISSION TO THE STATE BAR MAY BE EXCHANGED WITH THE MONTANA SUPREME COURT AND ITS COMMISSION ON CHARACTER AND FITNESS FOR LICENSING PURPOSES; AMENDING SECTION 44-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	759
230	<i>(House Bill No. 557; Andersen)</i> GENERALLY REVISING PROVISIONS RELATING TO ANATOMICAL GIFTS; PROVIDING FOR THE DEVELOPMENT OF AN ORGAN DONATION REGISTRY SYSTEM; PROVIDING FOR THE TRANSFER OF ORGAN DONOR INFORMATION FROM THE DEPARTMENT OF JUSTICE TO THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION; LIMITING USES OF ORGAN DONOR INFORMATION; ALLOWING THE DEPARTMENT OF JUSTICE TO RECOVER COSTS; CLARIFYING THAT THE DONOR'S WISHES ARE PARAMOUNT; AND AMENDING SECTIONS 61-5-301 AND 72-17-201, MCA	759
231	<i>(House Bill No. 700; Brueggeman)</i> REVISING LAWS RELATING TO THE ENVIRONMENT; PROVIDING THE BOARD OF ENVIRONMENTAL REVIEW WITH AUTHORITY FOR STAYING CERTAIN ACTIONS; ALLOWING THE BOARD TO REQUIRE A WRITTEN UNDERTAKING; AUTHORIZING THE BOARD TO ADOPT RULES FOR REGISTRATION OF SOURCES OF AIR CONTAMINANTS AND GENERAL PERMITS AND MULTIPLE SIMILAR SOURCES; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR GENERAL PERMITS FOR DISCHARGES FROM CATEGORIES OF POINT SOURCES; AMENDING SECTIONS 75-2-111, 75-2-204, 75-2-211, 75-2-218, 75-2-221, AND 75-5-401, MCA; AND PROVIDING AN	

	IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	763
232	<i>(House Bill No. 41; Noennig)</i> REVISING THE LEGISLATIVE COUNCIL'S FUNCTIONS AND APPOINTMENT AUTHORITY REGARDING INTERSTATE, INTERNATIONAL, AND INTERGOVERNMENTAL ENTITIES; AMENDING SECTION 5-11-707, MCA; REPEALING SECTION 5-11-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	773
233	<i>(House Bill No. 63; Kasten)</i> REPEALING THE STATUTORY DESIGNATION OF ASSETS AT CHIEF PLENTY COUPS STATE PARK AND PICTOGRAPH CAVE STATE PARK AS PRIORITIES FOR PRESERVATION AND FUNDING; REPEALING SECTION 23-1-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	775
234	<i>(House Bill No. 129; Gutsche)</i> EXTENDING THE AUTHORITY TO EXPEND UNEXPENDED FUNDS PREVIOUSLY APPROPRIATED FOR THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM TO THE PROGRAM TERMINATION DATE IN 2009; AMENDING SECTION 5, CHAPTER 529, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	775
235	<i>(House Bill No. 236; Erickson)</i> CLARIFYING AND REVISING THE USE OF BONDS ISSUED FOR TECHNOLOGY PROJECTS; PROVIDING FOR THE USE OF REMAINING BOND PROCEEDS ALLOCATED TO THE DEPARTMENT OF REVENUE FOR STABILIZATION AND ASSESSMENT OF SOFTWARE AND DATA IN THE POINTS PROJECT, FOR THE PLANNING, DEVELOPMENT, ACQUISITION, INSTALLATION, ADMINISTRATION, AND IMPLEMENTATION OF INFORMATION TECHNOLOGY SYSTEMS TO REPLACE DEPARTMENT OF REVENUE INFORMATION TECHNOLOGY SYSTEMS, FOR THE PLANNING, DEVELOPMENT, AND IMPLEMENTATION OF BUSINESS PROCESS CHANGES TO FACILITATE AND ENABLE THE REPLACEMENT ACTIVITIES, AND FOR STAFFING A PROJECT MANAGEMENT OFFICE TO FACILITATE AND ENABLE THE REPLACEMENT AND BUSINESS PROCESS CHANGE ACTIVITIES; AMENDING SECTIONS 2 AND 8, CHAPTER 447, LAWS OF 1997, AND SECTIONS 2 AND 5, CHAPTER 519, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	776
236	<i>(House Bill No. 272; Gillan)</i> PROHIBITING A STATE AGENCY FROM OFFSETTING A DEBT OWED BY A LOCAL GOVERNMENT AGAINST THE ENTITLEMENT SHARE PAYMENT OWED TO A LOCAL GOVERNMENT; AMENDING SECTIONS 15-1-121 AND 17-4-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	778
237	<i>(House Bill No. 319; Lawson)</i> GENERALLY REVISING LAWS RELATING TO CREDIT UNIONS; CLARIFYING THE USE OF "CREDIT UNION" IN THE NAME OF CREDIT UNIONS; AUTHORIZING OUT-OF-STATE CREDIT UNIONS TO DO BUSINESS IN THIS STATE UNDER CERTAIN CONDITIONS; AUTHORIZING MONTANA CREDIT UNIONS TO CONDUCT BUSINESS IN OTHER STATES UNDER CERTAIN CONDITIONS; GENERALLY REPLACING REFERENCES TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION WITH REFERENCES TO THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR EXAMINATIONS OF CREDIT UNIONS ON A SCHEDULE DETERMINED BY THE DEPARTMENT RATHER THAN ON AN ANNUAL BASIS; ESTABLISHING CRITERIA FOR CEASE AND DESIST ORDERS AND INVOLUNTARY DISSOLUTION; REVISING SUSPENSION CRITERIA; ESTABLISHING CRITERIA FOR	

APPOINTING A CONSERVATOR FOR A CREDIT UNION; ESTABLISHING CRITERIA FOR THE INVOLUNTARY MERGER OF A CREDIT UNION; PROVIDING FOR THE CONFIDENTIALITY OF CERTAIN CREDIT UNION INFORMATION MAINTAINED BY THE DEPARTMENT OF ADMINISTRATION; REVISING CERTAIN ORGANIZATIONAL AND ADMINISTRATIVE PROCEDURES OF CREDIT UNIONS; REVISING VOLUNTARY LIQUIDATION AND MERGER PROCEDURES; REVISING BOARD OF DIRECTORS AND COMMITTEE PROCEDURES; REVISING ACCOUNT, SHARE, AND LOAN PROVISIONS; REVISING RESERVE REQUIREMENTS; AMENDING SECTIONS 32-3-103, 32-3-201, 32-3-202, 32-3-203, 32-3-204, 32-3-205, 32-3-206, 32-3-301, 32-3-302, 32-3-303, 32-3-307, 32-3-310, 32-3-321, 32-3-322, 32-3-323, 32-3-401, 32-3-403, 32-3-404, 32-3-408, 32-3-411, 32-3-412, 32-3-414, 32-3-417, 32-3-505, 32-3-506, 32-3-508, 32-3-601, 32-3-602, 32-3-604, 32-3-608, 32-3-611, 32-3-702, 32-3-703, AND 32-3-705, MCA; AND REPEALING SECTION 32-3-704, MCA 785

238 (House Bill No. 340; Andersen) ALLOWING A GUARDIAN TO PROVIDE FOR FINAL DISPOSITION OF A WARD'S PHYSICAL REMAINS AND PERSONAL EFFECTS AFTER THE WARD'S DEATH, UPON ORDER OF A COURT; AMENDING SECTIONS 72-5-231, 72-5-233, 72-5-321, AND 72-5-324, MCA 803

239 (House Bill No. 554; Kasten) REVISING THE CRITERIA FOR AWARDED RECLAMATION GRANTS AND LOANS; TEMPORARILY REMOVING PRIORITIES FOR ABANDONED MINE PROJECTS AND REDUCING PRIORITIES FOR OIL AND GAS PROJECTS; AMENDING SECTION 90-2-1113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 806

240 (House Bill No. 585; Franklin) RELATING TO ADVANCED PRACTICE REGISTERED NURSING; PROVIDING FOR ATTENDING ADVANCED PRACTICE REGISTERED NURSES TO BE RECOGNIZED AS HEALTH CARE PROVIDERS WITH THE AUTHORITY TO FOLLOW A LIVING WILL PROTOCOL AND A DO NOT RESUSCITATE PROTOCOL; AND AMENDING SECTIONS 50-9-102, 50-9-103, 50-9-104, 50-9-105, 50-9-106, 50-9-107, 50-9-201, 50-9-202, 50-9-203, 50-9-204, 50-9-205, 50-9-206, 50-10-101, 50-10-102, 50-10-103, 50-10-104, AND 50-10-106, MCA 808

241 (House Bill No. 627; Lindeen) REVISING THE DEFINITION OF "COST" WHEN APPLIED TO PROPERTY TAX LIEN PURCHASES AND THE TAX DEED PROCESS; ALLOWING THE RECOVERY OF CERTAIN COSTS REQUIRED BY LAW THAT ARE INCURRED BY A PURCHASER OF A PROPERTY TAX LIEN; REQUIRING TIMELY SUBMISSION OF RECEIPTS TO THE COUNTY TREASURER FOR CERTAIN CLAIMED COSTS; AND AMENDING SECTION 15-17-121, MCA 817

242 (Senate Bill No. 206; Anderson) REVISING THE BOND RELEASE PROVISIONS FOR TIMBER SLASH FIRE HAZARD REDUCTION AGREEMENTS; AMENDING SECTION 76-13-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 819

243 (House Bill No. 196; Fisher) COMBINING THE BOARD OF BARBERS WITH THE BOARD OF COSMETOLOGISTS; ESTABLISHING THE COMPOSITION AND QUALIFICATION OF MEMBERS ON THE COMBINED BOARD OF BARBERS AND COSMETOLOGISTS AND PROVIDING FOR 5-YEAR STAGGERED TERMS FOR THE MEMBERS; SUBSTITUTING THE TERM "SALON OR SHOP" FOR "COSMETOLOGY SALON" AND "BARBERSHOP"; PROVIDING A PURPOSE STATEMENT FOR BARBERING AND COSMETOLOGY DISCIPLINES REGULATED UNDER TITLE 37, CHAPTER 31, MCA; REVISING DEFINITIONS IN TITLE 37, CHAPTER 31, MCA, TO BE CONSISTENT WITH THE

COMBINED BOARD; EXPANDING RULEMAKING AUTHORITY TO PROVIDE FOR THE COMBINED BOARD; REVISING PROHIBITED ACTS, LICENSING REQUIREMENTS, AND TEACHING LICENSE REQUIREMENTS TO REFLECT THE COMBINED BOARD; REDUCING THE HOURS OF STUDY FOR A BARBER'S LICENSE FROM 2,000 HOURS TO 1,500 HOURS; PROVIDING RECIPROCITY FOR OUT-OF-STATE BARBERS; REVISING SCHOOL CERTIFICATION AND INSPECTION REQUIREMENTS TO REFLECT THE COMBINED BOARD; ALLOWING USE OF A THIRD PARTY TO PROVIDE EXAMINATION SERVICES; REVISING FEE PROVISIONS AND LICENSE DENIAL, REVOCATION, AND SUSPENSION PROVISIONS TO REFLECT THE COMBINED BOARD; MOVING ELECTROLOGY PROVISIONS FROM TITLE 37, CHAPTER 32, MCA, TO TITLE 37, CHAPTER 31, MCA; AMENDING SECTIONS 2-15-1747, 15-30-256, 37-20-303, 37-31-101, 37-31-102, 37-31-203, 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-321, 37-31-322, 37-31-323, 37-31-331, 39-51-204, 49-2-101, AND 50-61-103, MCA; AND REPEALING SECTIONS 2-15-1746, 37-30-101, 37-30-201, 37-30-202, 37-30-203, 37-30-301, 37-30-303, 37-30-305, 37-30-307, 37-30-308, 37-30-310, 37-30-311, 37-30-401, 37-30-402, 37-30-403, 37-30-404, 37-30-405, 37-30-406, 37-30-407, 37-30-411, 37-30-412, 37-30-413, 37-30-421, 37-30-422, 37-30-423, 37-30-424, 37-30-501, 37-32-101, 37-32-102, 37-32-103, 37-32-201, 37-32-301, 37-32-302, 37-32-304, 37-32-305, 37-32-306, AND 37-32-311, MCA 820

244 *(House Bill No. 354; Newman)* CREATING AND REVISING EXEMPTIONS TO THE PRACTICE OF BARBERING, COSMETOLOGY, AND APPLICATION OF MAKEUP AND OTHER SERVICES INVOLVING ESTHETICS IN CASES OF EMERGENCY AND FOR CERTAIN VISUAL ARTS PRODUCTIONS; AMENDING SECTION 37-31-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 843

245 *(House Bill No. 368; Devlin)* EXTENDING THE 2-YEAR TIME LIMIT FOR SUBMITTING CLAIMS FOR REIMBURSEMENT FROM THE PETROLEUM TANK RELEASE CLEANUP FUND; MODIFYING THE ELIGIBILITY REQUIREMENTS; REVISING PROCEDURES FOR REIMBURSEMENT OF ELIGIBLE COSTS; PROVIDING FOR THIRD-PARTY REVIEW OF CLAIMS AND PLANS; REVISING THE AUTHORITY OF THE BOARD; AMENDING SECTIONS 75-11-307, 75-11-308, 75-11-309, 75-11-313, AND 75-11-318, MCA; AND PROVIDING AN APPLICABILITY DATE. 844

246 *(House Bill No. 414; Balyeat)* PROVIDING A GRACE PERIOD FOR REGISTRATION OF MOTORBOATS, SAILBOATS, PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES; AUTHORIZING THE OPERATION OF A MOTORBOAT, SAILBOAT, PERSONAL WATERCRAFT, SNOWMOBILE, OR OFF-HIGHWAY VEHICLE DURING THE GRACE PERIOD; AMENDING SECTIONS 23-2-511, 23-2-512, 23-2-616, 23-2-618, AND 23-2-817, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 851

247 *(House Bill No. 428; Keane)* REVISING THE RECLAMATION REQUIREMENTS FOR METAL MINES BY ELIMINATING A PROVISION NOT REQUIRING BACKFILLING; AMENDING SECTION 82-4-336, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 856

248 *(House Bill No. 458; Musgrove)* ALLOWING A QUALIFYING PERSON TO COMBINE AN APPLICATION FOR A SPECIAL LICENSE PLATE WITH AN APPLICATION FOR A LICENSE PLATE BEARING THE SYMBOL

	OF A PERSON WITH A DISABILITY; AND AMENDING SECTION 61-3-479, MCA	858
249	<i>(House Bill No. 479; Gillan)</i> REVISING THE LAWS THAT PROHIBIT TELECOMMUNICATIONS CARRIERS FROM SWITCHING A CUSTOMER'S TELECOMMUNICATIONS SERVICES WITHOUT THE CUSTOMER'S CONSENT; CLARIFYING THAT ENTITIES NOT OTHERWISE REGULATED BY THE PUBLIC SERVICE COMMISSION ARE SUBJECT TO THE PROHIBITION; DEFINING TERMS; PROHIBITING TELECOMMUNICATIONS CARRIERS AND OTHER ENTITIES FROM MISREPRESENTING PRODUCTS AND SERVICES TO BE CHARGED ON TELEPHONE BILLS; PROHIBITING INITIATION OF UNAUTHORIZED CHARGES TO BE PLACED ON TELEPHONE BILLS; ESTABLISHING REGISTRATION REQUIREMENTS FOR ENTITIES OFFERING OR BILLING FOR SERVICES AND PRODUCTS; ESTABLISHING PENALTIES; PROVIDING FOR NOTICE TO THE ATTORNEY GENERAL; PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY REQUEST COMPLAINTS OF VIOLATIONS; AMENDING SECTIONS 69-3-1301, 69-3-1302, 69-3-1303, AND 69-3-1305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	859
250	<i>(House Bill No. 549; Dickenson)</i> INCREASING TO \$30 THE SCHOLARSHIP DONATION FOR A COLLEGIATE LICENSE PLATE; AMENDING SECTION 61-3-465, MCA; AND PROVIDING AN EFFECTIVE DATE	865
251	<i>(House Bill No. 711; Gallus)</i> REQUIRING THE DEPARTMENT OF JUSTICE TO MAIL A RENEWAL NOTICE PRIOR TO THE EXPIRATION OF A DRIVER'S LICENSE; PROVIDING A RENEWAL NOTICE FEE; AND AMENDING SECTION 61-5-111, MCA.	866
252	<i>(Senate Bill No. 114; Johnson)</i> CLARIFYING THE CALCULATION OF THE GROWTH RATE OF THE ENTITLEMENT SHARE POOL FOR EACH YEAR OF THE NEXT BIENNIUM BEGINNING WITH CALENDAR YEAR 2002; AMENDING SECTION 15-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	868
253	<i>(Senate Bill No. 141; Wheat)</i> ALLOWING THE RELEASE OF CRIMINAL JUSTICE INFORMATION TO FIRE SERVICE AGENCIES AND FIRE MARSHALS REGARDING THE CRIMINAL INVESTIGATION OF A FIRE; PROVIDING A PROCEDURE FOR A PROSECUTOR TO PETITION THE COURT FOR RELEASE OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION IN CERTAIN CASES; AMENDING SECTIONS 44-5-103 AND 44-5-303, MCA; AND PROVIDING AN APPLICABILITY DATE.	873
254	<i>(Senate Bill No. 149; Barkus)</i> REVISING THE COMPOSITION OF THE DISTRICTS FROM WHICH THE DISTRICTING AND APPORTIONMENT COMMISSION MEMBERS ARE APPOINTED FOR THE PURPOSE OF POPULATION EQUALITY AND REDUCING THE NUMBER OF DISTRICTS FROM FOUR TO TWO; MAKING CORRESPONDING REVISIONS IN THE BOARD OF PUBLIC EDUCATION, BOARD OF REGENTS, COAL BOARD, AND HARD-ROCK MINING IMPACT BOARD APPOINTMENT PROVISIONS; AND AMENDING SECTIONS 2-15-1508, 2-15-1821, 2-15-1822, AND 5-1-102, MCA.	878
255	<i>(Senate Bill No. 183; Bohlinger)</i> PROVIDING FOR EDUCATIONAL AID FOR CERTAIN PERSONS EXONERATED OF A CRIME BY POSTCONVICTION DNA TESTING; PROVIDING FOR STATE AID FOR TUITION, FEES, BOOKS, BOARD, AND ROOM; AUTHORIZING THE	

BOARD OF REGENTS OF HIGHER EDUCATION TO WAIVE TUITION AND FEES FOR PERSONS ELIGIBLE FOR AID; AMENDING SECTION 20-25-421, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 880

256 *(Senate Bill No. 413; Kitzenberg)* NAMING U.S. HIGHWAY 2 AS THE 163RD INFANTRY REGIMENT (SUNSET DIVISION) HERITAGE HIGHWAY 882

257 *(House Bill No. 323; Jent)* REVISING LAWS GOVERNING REGISTERED MARKS AND TRADEMARKS TO CONFORM TO RECENT CHANGES IN THE MODEL ACT; DEFINING THE TERMS "ABANDONED", "DILUTION", AND "USE"; REVISING THE DEFINITIONS OF "SERVICE MARK" AND "TRADEMARK"; REVISING THE CONTENT OF THE APPLICATION FOR REGISTRATION; REVISING REQUIREMENTS FOR THE FILING OF APPLICATIONS; REVISING THE REQUIREMENTS FOR CERTIFICATES OF REGISTRATION; REVISING THE DURATION AND RENEWAL OF CERTIFICATES OF REGISTRATION; REVISING LAWS GOVERNING ASSIGNMENTS AND CHANGE OF NAME; REVISING LAWS GOVERNING CANCELLATION OF REGISTRATION; REPLACING THE STATUTORY LIST OF CLASSIFICATIONS OF GOODS AND SERVICES WITH RULES ADOPTED BY THE SECRETARY OF STATE TO CONFORM TO CLASSIFICATIONS ADOPTED BY THE UNITED STATES PATENT AND TRADEMARK OFFICE; REVISING LAWS ON INJURY TO BUSINESS REPUTATION AND DILUTION; PROVIDING FOR TREBLE DAMAGES AND ATTORNEY FEES IN CASES INVOLVING THE COMMISSION OF WRONGFUL ACTS WITH KNOWLEDGE OR IN BAD FAITH; PROVIDING FOR A FORUM FOR ACTIONS INVOLVING REGISTRATION AND PROVIDING FOR SERVICE OF PROCESS ON THE SECRETARY OF STATE; ELIMINATING EXISTING PROVISIONS CONCERNING WHEN A MARK IS CONSIDERED USED, APPLICATIONS FOR RENEWAL OF REGISTRATION, CERTIFICATES OF ASSIGNMENT, PENALTIES FOR FALSE SWEARING, AND THE FILING OF FACSIMILE COPIES; AMENDING SECTIONS 30-13-301, 30-13-303, 30-13-311, 30-13-312, 30-13-313, 30-13-315, 30-13-317, 30-13-318, 30-13-331, 30-13-332, 30-13-333, 30-13-334, AND 30-13-335, MCA; REPEALING SECTIONS 30-13-302, 30-13-314, 30-13-316, 30-13-319, AND 30-13-341, MCA; AND PROVIDING AN EFFECTIVE DATE 883

258 *(House Bill No. 389; Gibson)* PROVIDING THAT WHEN A JUDGE IMPOSES A TERM OF INCARCERATION IN A STATE PRISON, THE DEPARTMENT OF CORRECTIONS SHALL DESIGNATE THE STATE PRISON IN WHICH THE PERSON WILL BE PLACED; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 895

259 *(House Bill No. 496; Becker)* INCLUDING INJUNCTIONS OR OTHER COURT ORDERS UNDER SEXUAL ASSAULT OR STALKING LAWS IN THE DEFINITION OF "PROTECTION ORDER" FOR PURPOSES OF THE UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT; AMENDING SECTIONS 40-15-402 AND 40-15-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 897

260 *(House Bill No. 507; Brueggeman)* REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF LABOR AND INDUSTRY ADOPT RULES TO IMPLEMENT AND PREVENT CIRCUMVENTION OR EVASION OF THE CHILD LABOR STANDARDS ACT; MAKING THE ADOPTION OF

	RULES PERMISSIVE; AMENDING SECTION 41-2-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	899
261	<i>(House Bill No. 686; Bergren)</i> REVISING THE PROVISIONS OF THE DEFERRED RETIREMENT OPTION PLAN IN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; PROVIDING FOR RETROACTIVE PARTICIPATION IN THE DEFERRED RETIREMENT OPTION PLAN FOR CERTAIN MEMBERS; AMENDING SECTION 19-9-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	899
262	<i>(House Bill No. 731; Lehman)</i> PROVIDING AN INCREASED PENSION BENEFIT TO MEMBERS UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT WHO HAVE COMPLETED MORE THAN 20 YEARS OF SERVICE; AMENDING SECTIONS 19-17-401 AND 19-17-404, MCA; AND PROVIDING AN EFFECTIVE DATE	900
263	<i>(Senate Bill No. 22; Nelson)</i> AMENDING THE MONTANA AGRICULTURAL SEED LAWS TO ESTABLISH NEW LICENSING AND ASSESSMENT FEES, TO ESTABLISH MINIMUM AND MAXIMUM LICENSING AND ASSESSMENT FEES, AND TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO ADJUST THESE FEES BY RULE; AMENDING SECTIONS 80-5-130 AND 80-5-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	901
264	<i>(Senate Bill No. 24; Mangan)</i> ALLOWING A COUNTY OR MUNICIPALITY TO CHARGE A CONVENIENCE FEE FOR PROVIDING ELECTRONIC GOVERNMENT SERVICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	903
265	<i>(Senate Bill No. 85; Cocchiarella)</i> REQUIRING THE LEGISLATIVE COUNCIL TO REVIEW PROPOSED LEGISLATION FOR AGENCIES OR ENTITIES THAT ARE NOT ASSIGNED TO AN INTERIM COMMITTEE OR THE ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING 5-11-105, MCA	904
266	<i>(Senate Bill No. 133; Zook)</i> AUTHORIZING THE DEPARTMENT OF CORRECTIONS, RATHER THAN THE YOUTH COURT JUDGE, TO SELECT AND APPOINT THE JUVENILE PAROLE OFFICER REPRESENTATIVE ON YOUTH PLACEMENT COMMITTEES; AND AMENDING SECTION 41-5-121, MCA.	905
267	<i>(Senate Bill No. 162; Story)</i> CONFORMING MONTANA UNEMPLOYMENT INSURANCE LAW WITH FEDERAL LAW BY EXCLUDING A "NO-ADDITIONAL-COST SERVICE" FROM WAGES FOR STATE UNEMPLOYMENT INSURANCE TAX PURPOSES; DEFINING "NO-ADDITIONAL-COST SERVICE"; AMENDING SECTION 39-51-201, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.	906
268	<i>(Senate Bill No. 163; Mangan)</i> ALLOWING THE PAYMENT OF TAXES AND FEES TO LOCAL GOVERNMENT ENTITIES BY CREDIT CARD OR OTHER COMMERCIALY ACCEPTABLE MEANS; PROVIDING THAT THE PAYMENT IS NOT CONSIDERED MADE UNTIL THE LOCAL GOVERNMENT ENTITY RECEIVES ITS PAYMENT FROM THE FINANCIAL INSTITUTION OR CREDIT CARD COMPANY; ALLOWING THAT A FEE BE CHARGED UPON NOTICE OF NONPAYMENT; IMPOSING A CONVENIENCE FEE ON A PERSON PAYING BY CREDIT CARD OR OTHER COMMERCIALY ACCEPTABLE MEANS; ALLOWING LOCAL GOVERNMENT ENTITIES TO ENTER INTO ANY NECESSARY AGREEMENTS WITH FINANCIAL INSTITUTIONS, CREDIT CARD COMPANIES, AND STATE AGENCIES; SPECIFYING THAT FEES PAID TO FINANCIAL INSTITUTIONS OR CREDIT CARD	

MONTANA SESSION LAWS 2003

xlii

	COMPANIES MUST BE PAID FROM AN APPROPRIATE FUND OF A LOCAL GOVERNMENT ENTITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	909
269	(Senate Bill No. 197; Perry) CLARIFYING THAT A MAYOR MAY NOT REJECT OR REFUSE TO APPOINT TO THE CITY PLANNING BOARD A COUNTY REPRESENTATIVE WHO HAS BEEN DESIGNATED BY A BOARD OF COUNTY COMMISSIONERS; AND AMENDING SECTION 76-1-223, MCA	911
270	(Senate Bill No. 213; Nelson) INCREASING THE MAXIMUM WHEAT AND BARLEY ASSESSMENT COLLECTED BY THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 80-11-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	911
271	(House Bill No. 285; Brown) REVISING LAWS RELATED TO MILITARY STATUS; PROVIDING THAT A PUBLIC HIGH SCHOOL SHALL PROVIDE EQUAL ACCESS TO U.S. ARMED FORCES RECRUITERS VISITING THE CAMPUS AS OTHER RECRUITERS; PROTECTING THE ELECTION LAW RESIDENCY RIGHTS OF A RESERVE MEMBER OF THE U.S. ARMED FORCES ACTIVATED TO FEDERAL MILITARY DUTY; PROHIBITING CERTAIN ADVERSE ACTIONS RELATED TO THE PROFESSIONAL LICENSURE OF A RESERVE MEMBER OF THE U.S. ARMED FORCES WHO IS ACTIVATED TO FEDERAL MILITARY DUTY FOR AN EXTENDED LENGTH OF TIME; AMENDING SECTIONS 13-1-112, 27-12-206, 37-1-105, 37-1-136, 37-3-313, 37-3-346, 37-4-307, 37-4-406, 37-5-307, 37-6-304, 37-7-303, 37-8-431, 37-9-305, 37-10-307, 37-11-201, 37-11-308, 37-12-307, 37-13-306, 37-14-310, 37-15-308, 37-16-407, 37-17-306, 37-17-307, 37-18-307, 37-19-306, 37-20-302, 37-21-302, 37-22-304, 37-23-205, 37-24-308, 37-25-307, 37-26-201, 37-27-105, 37-28-203, 37-29-306, 37-31-322, 37-32-305, 37-34-201, 37-35-203, 37-40-304, 37-42-308, 37-43-307, 37-43-313, 37-47-307, 37-50-317, 37-51-310, 37-53-103, 37-53-203, 37-54-211, 37-54-311, 37-60-312, 37-65-306, 37-66-307, 37-67-315, 37-68-310, 37-69-307, 37-72-306, AND 50-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	912
272	(House Bill No. 220; Laszloffy) REVISING AND CLARIFYING THE LAWS PROVIDING FOR RESTITUTION BY CRIMINALS TO ADDRESS COURT OPINIONS; ENSURING THAT THE DUTY TO PAY CONTINUES TO EXIST UNTIL RESTITUTION IS FULLY PAID; ALLOWING THE STATE TO CONTRACT WITH A PRIVATE ENTITY OR GOVERNMENTAL AGENCY FOR THE COLLECTION OF RESTITUTION PAYMENTS; PROVIDING FOR FULL REPLACEMENT VALUE RESTITUTION; ADDING METHODS TO ENSURE PAYMENT OF RESTITUTION; CHANGING PROCEDURES FOR SUPERVISION OF THE PAYMENT OF RESTITUTION; AMENDING SECTIONS 46-18-201, 46-18-237, 46-18-241, 46-18-242, 46-18-243, 46-18-244, 46-18-245, AND 53-30-132, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE	936
273	(House Bill No. 287; Lindeen) REQUIRING A PERSON WHO PURPOSELY IGNITES A FIRE WITHOUT A PERMIT TO REIMBURSE THE ENTITY RESPONSIBLE FOR ANY FIRE SUPPRESSION ACTIVITIES RESULTING FROM THE ILLEGAL FIRE; AND AMENDING SECTION 7-33-2205, MCA	945
274	(House Bill No. 438; Forrester) REVISING THE REQUIREMENTS FOR PAYMENTS TO CONTRACTORS AND SUBCONTRACTORS WITH RESPECT TO CONSTRUCTION CONTRACTS; REVISING DEFINITIONS; PROVIDING THAT A CONSTRUCTION CONTRACT MAY PROVIDE FOR A BILLING CYCLE THAT IS OTHER THAN A	

MONTHLY BILLING CYCLE; PROVIDING THAT CERTAIN CONSTRUCTION CONTRACT PROVISIONS ARE AGAINST STATE POLICY AND ARE VOID AND UNENFORCEABLE; ESTABLISHING CONDITIONS UNDER WHICH A CONTRACTOR OR SUBCONTRACTOR MAY SUSPEND PERFORMANCE OR TERMINATE A CONSTRUCTION CONTRACT; AMENDING SECTIONS 28-2-2101 AND 28-2-2103, MCA; AND PROVIDING AN APPLICABILITY DATE 946

275 *(House Bill No. 684; Olson)* REPEALING THE TERMINATION DATE OF A PROVISION ALLOWING THE TRANSFER OF A REVOKED COAL MINE OPERATING PERMIT; REPEALING SECTION 5, CHAPTER 522, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 951

276 *(Senate Bill No. 97; Story)* REQUIRING THE COUNTY SUPERINTENDENT IN EACH COUNTY TO REPORT THE REVENUE AMOUNTS USED TO ESTABLISH THE LEVY REQUIREMENTS FOR THE COUNTYWIDE TRANSPORTATION AND RETIREMENT FUNDS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION; PROVIDING THAT BUDGETING PROCEDURES APPLY TO COUNTY FUNDS SUPPORTING SCHOOL DISTRICT TRANSPORTATION AND RETIREMENT OBLIGATIONS; AMENDING SECTIONS 20-3-209, 20-9-101, 20-9-501, AND 20-10-146, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 951

277 *(Senate Bill No. 150; Johnson)* REVISING AND CLARIFYING LOCAL GOVERNMENT BONDING AND ASSESSMENT LAWS; CLARIFYING REFUNDINGS CONCERNING VARIABLE RATES; PROVIDING PROTEST PROCEDURES FOR PROPERTY CREATED AS A CONDOMINIUM UNDER SPECIAL AND RURAL IMPROVEMENT DISTRICTS; REVISING THE DEFINITION OF "OWNER" FOR PURPOSES OF PROTESTING THE CREATION OR EXTENSION OF A SPECIAL OR RURAL IMPROVEMENT DISTRICT; REVISING THE PROCESS FOR PAYMENT OF IMPROVEMENTS AND MAINTENANCE OF SPECIAL AND RURAL IMPROVEMENT DISTRICTS; CLARIFYING CONDOMINIUM PROPERTY FOR ASSESSMENT PURPOSES FOR SPECIAL AND RURAL IMPROVEMENT DISTRICTS; ELIMINATING DEFINITIONS OF BOND FORMS FOR SPECIAL AND RURAL IMPROVEMENT DISTRICTS; CLARIFYING THE TYPES OF INVESTMENT SECURITIES AVAILABLE IN CERTAIN REFUNDINGS; CLARIFYING CROSSOVER REFUNDING; AMENDING SECTIONS 7-7-2304, 7-7-2316, 7-7-4304, 7-7-4316, 7-7-4502, 7-12-2109, 7-12-2120, 7-12-2161, 7-12-2168, 7-12-2171, 7-12-4110, 7-12-4174, 7-12-4203, 7-13-114, 7-13-3043, 7-14-4712, 7-14-4732, 17-5-2102, AND 20-9-412, MCA; REPEALING SECTIONS 7-12-2110 AND 7-12-4111, MCA; AND PROVIDING AN EFFECTIVE DATE 955

278 *(Senate Bill No. 445; Barkus)* REPEALING THE TRANSITION SECTION OF THE DISTRICTING AND APPORTIONMENT PLAN THAT ASSIGNS HOLDOVER SENATORS TO NEW DISTRICTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 968

279 *(House Bill No. 474; Weiss)* PROVIDING THAT AN ADJUSTMENT OF THE RENTAL PRICE OF A MOTOR VEHICLE, TRAILER, OR SEMITRAILER, BASED ON THE AMOUNT REALIZED UPON THE SALE OR DISPOSITION OF THE MOTOR VEHICLE, TRAILER, OR SEMITRAILER, DOES NOT CREATE A SALE OR SECURITY INTEREST 969

280 *(Senate Bill No. 118; DePratu)* GENERALLY REVISING THE LAWS GOVERNING LICENSE PLATES; PROHIBITING, WITH EXCEPTIONS, THE DISPLAY OF PRIOR DESIGNS OF NUMBER PLATES OR CERTAIN SPECIAL LICENSE PLATES AFTER ISSUANCE OF A NEW

DESIGN; DELAYING THE NEW ISSUE OF NUMBER PLATES UNTIL 2006; INCREASING LICENSE PLATE FEES; REVISING THE REPORTING REQUIREMENTS PERTAINING TO HOLDERS OF AMATEUR RADIO OPERATOR LICENSE PLATES; REVISING THE REQUIREMENTS GOVERNING QUALIFICATION, ISSUANCE, AND RENEWAL OF GENERIC SPECIALTY LICENSE PLATES; ALLOWING COLLECTION AND DISBURSEMENT OF SPONSOR DONATION FEES BY COUNTY TREASURERS AND THE DEPARTMENT OF REVENUE; EXPANDING THE VEHICLE TYPES ELIGIBLE FOR GENERIC SPECIALTY LICENSE PLATES; MAKING THE MONTANA GENERIC SPECIALTY LICENSE PLATE ACT PERMANENT; CLARIFYING SPECIAL LICENSE PLATE TYPES THAT MAY BE USED TO PERMANENTLY REGISTER A VEHICLE; AMENDING SECTIONS 61-3-301, 61-3-321, 61-3-332, 61-3-333, 61-3-424, 61-3-465, 61-3-473, 61-3-474, 61-3-475, 61-3-476, 61-3-477, 61-3-478, 61-3-479, 61-3-480, 61-3-481, AND 61-3-562, MCA; REPEALING SECTION 21, CHAPTER 402, LAWS OF 2001; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES 969

281 *(Senate Bill No. 211; Hansen)* ELIMINATING THE JUNK VEHICLE DISPOSAL FEE; AMENDING SECTIONS 75-10-513 AND 75-10-532, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 991

282 *(Senate Bill No. 292; Cocchiarella)* EXEMPTING FROM THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977 HOUSING PROVIDED BY THE MONTANA UNIVERSITY SYSTEM AND OTHER POSTSECONDARY EDUCATION INSTITUTIONS; AND AMENDING SECTION 70-24-104, MCA 992

283 *(House Bill No. 160; Haines)* APPROPRIATING MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT AND LITIGATION IN THE CLARK FORK RIVER BASIN; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; AND PROVIDING EFFECTIVE DATES 993

284 *(House Bill No. 417; Golie)* REPEALING THE SMALL POWER PRODUCTION LAWS; REPEALING SECTIONS 69-3-601, 69-3-602, 69-3-603, AND 69-3-604, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE AND AN APPLICABILITY DATE 994

285 *(House Bill No. 445; Pattison)* PROVIDING THAT A ROCKY MOUNTAIN DOUBLE CARRYING BALED HAY MAY NOT EXCEED 88 FEET OF COMBINED TRAILER LENGTH; AMENDING SECTION 61-10-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION. 994

286 *(House Bill No. 546; Wagman)* INCREASING FROM 2 YEARS TO 10 YEARS THE MAXIMUM INCARCERATION FOR THE OFFENSE OF FAILURE TO PROVIDE SUPPORT FOR 6 MONTHS OR FAILURE TO PROVIDE SUPPORT IN A CUMULATIVE AMOUNT EQUAL TO OR IN EXCESS OF 6 MONTHS' SUPPORT; AMENDING SECTION 45-5-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 997

287 *(House Bill No. 617; Mendenhall)* REVISING THE METAL MINE RECLAMATION LAWS; PROHIBITING AN INCREASE IN A MINE RECLAMATION BOND UNTIL A MINE OPERATING PERMIT MODIFICATION IS COMPLETE; AMENDING SECTION 82-4-337, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 999

288 *(House Bill No. 678; Lindeen)* ESTABLISHING A DECLARATORY RULING PROCESS UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; AUTHORIZING THE BOARD OF SUPERVISORS OF A CONSERVATION DISTRICT TO ISSUE DECLARATORY RULINGS; PROVIDING FOR JUDICIAL REVIEW OF A DECLARATORY RULING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES 1001

289 *(Senate Bill No. 66; Bohlinger)* REDUCING THE YEARS OF SERVICE REQUIRED BEFORE MEMBERS OF THE PUBLIC EMPLOYEES', SHERIFFS', HIGHWAY PATROL OFFICERS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS MAY PURCHASE MILITARY SERVICE; PROVIDING THAT MEMBERS OF THE JUDGES' RETIREMENT SYSTEM MAY PURCHASE MILITARY SERVICE; PROVIDING THAT ANY VESTED MEMBER OF THE SYSTEM MAY PURCHASE THE SERVICE; AMENDING SECTIONS 19-3-503, 19-6-801, 19-7-803, 19-7-804, 19-8-901, 19-9-403, AND 19-13-403, MCA; AND PROVIDING AN EFFECTIVE DATE 1003

290 *(Senate Bill No. 77; Johnson)* EXTENDING UNIVERSAL SYSTEM BENEFITS CHARGE RATES BY 2 1/2 YEARS THROUGH DECEMBER 2005; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1007

291 *(Senate Bill No. 135; Thomas)* REVISING THE LAWS RELATING TO THE SCHOOL GUARANTEE ACCOUNT; PROVIDING THAT INTEREST PAYMENTS ON THE COAL SEVERANCE TAX LOAN TO PURCHASE MINERAL PRODUCTION RIGHTS MUST BE PAID MONTHLY ON THE CURRENT OUTSTANDING LOAN BALANCE; PROVIDING THAT THE TRUST LAND ADMINISTRATION ACCOUNT DOES NOT RECEIVE A PORTION OF THE MINERAL ROYALTIES PURCHASED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH THE COAL SEVERANCE TAX LOAN; AMENDING SECTIONS 20-9-622 AND 77-1-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1009

292 *(Senate Bill No. 145; Bohlinger)* PROVIDING THAT A MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM MAY PURCHASE MEMBERSHIP SERVICE AND SERVICE CREDIT FOR VERIFIABLE SERVICE AS A VOLUNTEER IN A UNITED STATES SERVICE PROGRAM; AND AMENDING SECTION 19-3-514, MCA. 1010

293 *(Senate Bill No. 188; Cocchiarella)* REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO INCLUDE LICENSED ELECTRICAL CONTRACTORS AND LICENSED MASTER PLUMBERS IN THE STANDARD PREVAILING WAGE SURVEY; AMENDING SECTION 18-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1011

294 *(Senate Bill No. 220; Thomas)* REVISING THE PUBLIC SERVICE COMMISSION DISTRICTS FOR THE PURPOSE OF POPULATION EQUALITY; PROVIDING FOR TRANSITION; AND AMENDING SECTION 69-1-104, MCA 1014

295 *(Senate Bill No. 249; Taylor)* REVISING AND CLARIFYING THE PURPOSE FOR WHICH GENERAL OBLIGATION BONDS MAY BE ISSUED FOR FINANCING AND ACQUIRING INFRASTRUCTURE IMPROVEMENTS AND EQUIPMENT FOR AEROSPACE TRANSPORTATION AND TECHNOLOGY PROJECTS; PROVIDING THAT AN AGREEMENT MAY PROVIDE THE PROJECT DEVELOPER WITH THE RIGHT OF FIRST REFUSAL FOR THE PURCHASE OF REAL PROPERTY SECURED BY THE BONDS AT FAIR MARKET VALUE

PLUS REIMBURSEMENT TO THE STATE FOR ANY COSTS INCURRED IN THE ISSUANCE OF THE BONDS; AMENDING SECTION 5, CHAPTER 269, LAWS OF 1999, SECTION 1, CHAPTER 6, SPECIAL LAWS OF MAY 2000, AND SECTION 1, CHAPTER 589, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . 1015

296 *(House Bill No. 6; Witt)* APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING EFFECTIVE DATES. 1017

297 *(House Bill No. 8; Witt)* APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 57TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE 1021

298 *(House Bill No. 124; Olson)* CREATING A SPECIAL REVENUE ACCOUNT TO BE USED BY THE DEPARTMENT OF JUSTICE ON BEHALF OF THE MONTANA LAW ENFORCEMENT ACADEMY; PROVIDING FOR A SURCHARGE UPON CERTAIN CRIMINAL CONVICTIONS TO FUND LAW ENFORCEMENT ACADEMY OPERATIONS; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES 1024

299 *(House Bill No. 186; Matthews)* GENERALLY REVISING THE LAWS GOVERNING THE LICENSING AND REGULATION OF MOTOR VEHICLE DEALERS; AUTHORIZING WITHDRAWAL OF DEALER AND DEMONSTRATOR PLATES AND 20-DAY PERMITS IN CERTAIN CONDITIONS; REQUIRING DEALERS TO PAY OFF OUTSTANDING BALANCES ON TRADE-IN OR CONSIGNED VEHICLES WITHIN A CERTAIN PERIOD; REQUIRING A SECURED PARTY WHO HAS BEEN PAID IN FULL TO DELIVER A RELEASE WITHIN A CERTAIN PERIOD; REMOVING THE REQUIREMENT THAT A DEALER LICENSE BE LIMITED TO A 1-YEAR TERM AND ALLOWING THE LICENSE TO REMAIN VALID UNTIL SUSPENDED, REVOKED, OR CANCELED UPON SURRENDER; INCREASING BOND REQUIREMENTS FOR NEW AND USED MOTOR VEHICLE DEALERS, RECREATIONAL VEHICLE DEALERS, TRAILER DEALERS, WHOLESALERS, AND AUTO AUCTIONS TO \$50,000 AND FOR MOTORCYCLE DEALERS TO \$15,000; REVISING THE REPORTING REQUIREMENTS CONCERNING DEALER PLATES; CLARIFYING THE GRACE PERIOD FOR DEALER AND DEMONSTRATOR PLATE USAGE; REVISING DEALER RECORDKEEPING REQUIREMENTS; REVISING THE PERIOD OF SUSPENSION OF A DEALER LICENSE; LIMITING THE EXEMPTION FROM REGISTRATION LAWS AND SPECIAL TRANSFER PRIVILEGES FOR DEALERS WHO FAIL TO FILE AN ANNUAL REPORT AND PAY ANNUAL FILING AND REGISTRATION FEES BEFORE CERTAIN DATES; ALLOWING A LICENSED AUTO AUCTION TO USE AUTO AUCTION LICENSE PLATES TO TRANSPORT VEHICLES BOTH TO AND FROM AUCTION TO A POINT OF STORAGE OR DELIVERY IN THIS STATE; CLARIFYING THE REQUIREMENT FOR DEALERS TO CARRY AND MAINTAIN GENERAL LIABILITY INSURANCE; REQUIRING INSURANCE CARRIERS TO NOTIFY THE DEPARTMENT

OF JUSTICE UPON CANCELLATION OR TERMINATION OF A DEALER'S GENERAL LIABILITY INSURANCE POLICY; REPLACING THE ANNUAL LICENSE RENEWAL REQUIREMENT WITH THE REQUIREMENT TO FILE AN ANNUAL REPORT AND PAY CERTAIN FEES; REQUIRING CERTAIN USED MOTOR VEHICLE DEALERS TO CERTIFY TO THE RETAIL SALE OF AT LEAST 12 VEHICLES IN THE PRIOR YEAR OR PAY AN ADDITIONAL REGISTRATION FEE OF \$25; PROHIBITING THE DEPARTMENT OF JUSTICE FROM RENEWING DEALER OR DEMONSTRATOR PLATES FOR A DEALER WHO HAS NOT FILED AN ANNUAL REPORT OR PAID REQUIRED FEES BY A CERTAIN DATE; PROHIBITING THE DEPARTMENT OF JUSTICE FROM TRANSFERRING TITLE TO A DEALER WITHOUT REGISTERING THE VEHICLE WHEN THE DEALER HAS NOT FILED AN ANNUAL REPORT OR PAID REQUIRED FEES BY A CERTAIN DATE; REQUIRING THE DEPARTMENT OF JUSTICE TO INITIATE ADMINISTRATIVE ACTION TO REVOKE A DEALER'S LICENSE WHEN THE DEALER FAILS TO FILE AN ANNUAL REPORT AND PAY FEES BY A CERTAIN DATE; INCREASING THE DEALER AND WHOLESALER DEMONSTRATOR PLATE FEE TO \$5; CLARIFYING REQUIREMENTS FOR USE OF DEMONSTRATOR PLATES; REVISING REQUIREMENTS FOR THE CONTESTED CASE HEARING PROCESS TO CANCEL OR TERMINATE A MOTOR VEHICLE FRANCHISE; INCREASING THE FEE FOR TRANSIT PLATES TO \$10 AND LIMITING THE NUMBER OF SETS OF TRANSIT PLATES THAT MAY BE ISSUED TO A TRANSPORTER OF NEW MOTOR VEHICLES, UNLESS NEED FOR ADDITIONAL PLATES IS DEMONSTRATED; AMENDING SECTIONS 61-4-101, 61-4-102, 61-4-104, 61-4-105, 61-4-107, 61-4-111, 61-4-120, 61-4-123, 61-4-124, 61-4-125, 61-4-129, 61-4-206, AND 61-4-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 1025

300 (House Bill No. 195; Younkin) INCREASING THE PENALTIES FOR DRIVING UNDER THE INFLUENCE OR DRIVING WITH AN ILLEGAL ALCOHOL CONCENTRATION; AMENDING SECTIONS 61-2-302, 61-5-208, 61-8-421, 61-8-442, 61-8-714, 61-8-722, AND 61-8-733, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1045

301 (House Bill No. 230; Erickson) PROVIDING THAT AN EMPLOYER MAY PAY WAGES DUE IN THE ENSUING PAY PERIOD WHEN AN EMPLOYEE SUBMITS A TIMESHEET AFTER THE EMPLOYER'S DEADLINE FOR PROCESSING TIMESHEETS FOR A PARTICULAR PAY PERIOD; ELIMINATING ARCHAIC LANGUAGE PROVIDING THAT WAGES OWED TO EMPLOYEES WHO ARE ABSENT FROM WORK ON THE REGULAR PAY DATE MUST BE PAID AT ANY TIME AFTER THE DATE OF REGULAR PAYMENT AND PROVIDING THAT THE LAW IS INAPPLICABLE TO CERTAIN EMPLOYEES WHO BY CUSTOM RECEIVE WAGES MONTHLY; AMENDING SECTION 39-3-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1050

302 (House Bill No. 293; Smith) PROHIBITING RACIAL PROFILING; REQUIRING LAW ENFORCEMENT AGENCIES TO ADOPT A DETAILED WRITTEN POLICY THAT CLEARLY DEFINES THE ELEMENTS CONSTITUTING RACIAL PROFILING AND THAT PROHIBITS RACIAL PROFILING; REQUIRING THE POLICY TO INCLUDE A PROCEDURE FOR INVESTIGATING COMPLAINTS OF RACIAL PROFILING; REQUIRING A LAW ENFORCEMENT AGENCY TO TAKE APPROPRIATE ACTION AGAINST A PEACE OFFICER

VIOLATING THE POLICY AGAINST RACIAL PROFILING; DEFINING "RACIAL PROFILING"; AND PROVIDING AN EFFECTIVE DATE . . . 1051

303 *(House Bill No. 419; Laszloffy)* REQUIRING A RAILROAD CORPORATION TO ERECT SIGNS IN ADVANCE OF A CROSSING AT WHICH A LOCOMOTIVE HORN AND BELL MUST BE SOUNDED; REQUIRING THE HORN AND BELL TO BE SOUNDED FOR AT LEAST 15 SECONDS PRIOR TO A LOCOMOTIVE OCCUPYING A CROSSING IF THE TRAIN IS STOPPED WITHIN A CERTAIN DISTANCE OF THE CROSSING; CLARIFYING THE MEANING OF THE PHRASE "PUBLIC HIGHWAY, PUBLIC ROAD, OR PUBLIC RAILROAD CROSSING" FOR THE PURPOSES OF DETERMINING WHEN A LOCOMOTIVE HORN AND BELL MUST BE SOUNDED; AMENDING SECTION 69-14-562, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1052

304 *(House Bill No. 456; Parker)* SUBSTITUTING THE TERM "PREDOMINANT AGGRESSOR" FOR THE TERM "PRIMARY AGGRESSOR" IN THAT PART OF THE PARTNER OR FAMILY MEMBER ARREST STATUTE THAT RELATES TO MUTUAL AGGRESSION; AND AMENDING SECTION 46-6-311, MCA. 1054

305 *(House Bill No. 482; Forrester)* PROVIDING THAT A PROVISION IN A CONSTRUCTION CONTRACT THAT REQUIRES ONE PARTY TO THE CONTRACT TO INDEMNIFY ANOTHER PARTY TO THE CONTRACT, OR THE OTHER PARTY'S OFFICERS, EMPLOYEES, OR AGENTS, FOR THE OTHER PARTY'S LIABILITY, LOSSES, DAMAGES, OR COSTS IS VOID AS AGAINST THE PUBLIC POLICY OF THIS STATE; AUTHORIZING A CONSTRUCTION CONTRACT TO CONTAIN A PROVISION REQUIRING A PARTY TO A CONTRACT TO PURCHASE A PROJECT-SPECIFIC INSURANCE POLICY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1055

306 *(House Bill No. 494; Wilson)* REVISING THE LAWS GOVERNING LICENSURE OF PHYSICIANS; PROVIDING FOR TEMPORARY LICENSURE OF PERSONS IN AN APPROVED RESIDENCY PROGRAM UPON CERTAIN CONDITIONS; AND AMENDING SECTIONS 37-3-304 AND 37-3-305, MCA 1056

307 *(House Bill No. 501; Noennig)* REVISING THE PROVISIONS RELATED TO LICENSURE OF RADIOLOGIC TECHNOLOGISTS; PROVIDING FOR APPROVAL BY THE BOARD OF RADIOLOGIC TECHNOLOGISTS OF A LICENSED RADIOLOGIC TECHNOLOGIST TO PERFORM THE FUNCTIONS OF A RADIOLOGIST ASSISTANT UNDER SUPERVISION OF A RADIOLOGIST; DEFINING TERMS; AND AMENDING SECTIONS 37-14-102 AND 37-14-301, MCA. 1057

308 *(House Bill No. 555; Bitney)* CHANGING THE AMOUNT THAT MAY BE CHARGED FOR A PAST-DUE LOAN PAYMENT FROM 5 PERCENT OF THE AMOUNT PAST DUE TO THE GREATER OF 5 PERCENT OF THE AMOUNT PAST DUE OR \$15; AND AMENDING SECTION 32-5-301, MCA. 1060

309 *(House Bill No. 579; Shockley)* PROVIDING THAT THE PARTIES TO A DIVORCE OR SEPARATION IN WHICH A TEMPORARY INJUNCTION IS SOUGHT MUST BE INFORMED BY THE COURT AT THE HEARING ON THE INJUNCTION THAT THE INJUNCTION MIGHT LIMIT OR RESULT IN LIMITS ON THE RIGHTS OF ONE OR BOTH PARTIES RELATING TO FIREARMS UNDER STATE AND FEDERAL LAW; CLARIFYING THAT A PARTY AGAINST WHOM AN INJUNCTION IS SOUGHT IS ENTITLED TO NOTICE AND HEARING; PROVIDING THAT A PERSON CHARGED WITH AN OFFENSE MUST BE INFORMED BY THE COURT THAT CONVICTION MAY RESULT IN

TITLE CONTENTS

THE LOSS OF VARIOUS RIGHTS REGARDING FIREARMS UNDER STATE AND FEDERAL LAW; AND AMENDING SECTIONS 40-4-121 AND 46-7-102, MCA 1062

310 *(House Bill No. 580; Bitney)* PROVIDING THE PUBLIC SERVICE COMMISSION WITH EXPEDITED COMPLAINT AUTHORITY FOR INTERCONNECTION AND EXCHANGE ACCESS DISPUTES; PROVIDING AN EXPEDITED COMPLAINT PROCESS AND PROCEDURES; AMENDING SECTION 69-3-832, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1065

311 *(House Bill No. 591; Fuchs)* PROVIDING FOR TERM PERMIT FEES FOR CERTAIN OVERWEIGHT VEHICLE LOADS; AND AMENDING SECTION 61-10-125, MCA 1067

312 *(House Bill No. 637; Raser)* PROHIBITING UNSOLICITED ADVERTISEMENTS THROUGH FACSIMILE TRANSMISSION; AND PROVIDING THAT A VIOLATION OF THIS PROHIBITION IS A VIOLATION OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973. 1069

313 *(Senate Bill No. 180; Ryan)* MAKING PERMANENT THE PROVISION THAT ALLOWS AN INDIVIDUAL WHO LEAVES WORK OR IS DISCHARGED BECAUSE OF CIRCUMSTANCES RESULTING FROM DOMESTIC VIOLENCE TO RECEIVE UNEMPLOYMENT BENEFITS; REPEALING SECTION 4, CHAPTER 520, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1070

314 *(Senate Bill No. 283; Wheat)* REVISING LAWS RELATING TO VENUE IN FAMILY LAW CASES; REQUIRING MONTANA RESIDENCE FOR 90 DAYS PRECEDING THE FILING OF AN ACTION FOR DISSOLUTION OF MARRIAGE; ALLOWING MEDIATION AGREEMENTS TO BE ADMISSIBLE AS EVIDENCE IF AFFIRMED BY THE PARTIES; AND AMENDING SECTIONS 25-2-118, 40-4-104, AND 40-4-305, MCA 1070

315 *(Senate Bill No. 302; McCarthy)* CHANGING THE WAY UNDIVIDED OWNERSHIP INTERESTS IN PROPERTY ARE ASSESSED FOR PROPERTY TAX PURPOSES; PROVIDING THAT THE OWNERS OF UNDIVIDED INTERESTS MAY BE ASSESSED SEPARATELY UPON REQUEST; PROVIDING THAT PAYMENT OF THE TOTAL PROPERTY TAX DUE BY A SINGLE OWNER MAY BE PAYMENT ON BEHALF OF ALL OF THE OWNERS OR THAT A PAYING CO-OWNER MAY, AFTER 3 YEARS OF PAYMENTS AND NOTICES TO THE NONPAYING CO-OWNER, TAKE A PROPERTY TAX LIEN ON THE NONPAYING CO-OWNER'S INTEREST; PROVIDING THAT NONPAYMENT BY A SEPARATELY ASSESSED CO-OWNER SUBJECTS ONLY THE NONPAYING CO-OWNER'S INTEREST TO A TAX SALE; AND AMENDING SECTIONS 15-7-138 AND 15-16-102, MCA 1071

316 *(Senate Bill No. 329; Mangan)* PROVIDING FOR JUVENILE DETENTION OR JUVENILE CORRECTIONS OFFICER AND ADMINISTRATOR STANDARDS, CERTIFICATION, AND TRAINING; PROVIDING THAT TRAINING BE UNDER THE AUSPICES OF THE BOARD OF CRIME CONTROL AND THE MONTANA LAW ENFORCEMENT ACADEMY; EXTENDING THE TIME PERIOD FOR RECEIVING TRAINING FROM 6 MONTHS TO 1 YEAR FOR PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, JUVENILE DETENTION AND JUVENILE CORRECTIONS OFFICERS, AND COMMERCIAL VEHICLE INSPECTORS; AMENDING SECTIONS 44-4-301 AND 44-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE. 1074

317 *(Senate Bill No. 331; Squires)* GENERALLY REVISING THE LAWS APPLYING TO THE PRACTICE OF NURSING; ELIMINATING THE

REQUIREMENT THAT THE PRACTICE OF NURSING APPLIES ONLY TO THOSE PRACTICING FOR COMPENSATION; AMENDING SECTIONS 37-8-102, 37-8-431, AND 37-8-443, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1077

318 *(Senate Bill No. 409; Stapleton)* REVISING LAWS RELATED TO STATE LANDS; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONDUCT CERTAIN INVENTORIES AND ASSESSMENTS; AUTHORIZING THE DEPARTMENT TO CONDUCT LEASE PLANNING; ELIMINATING DUPLICATIVE ENVIRONMENTAL REVIEWS; AMENDING SECTIONS 77-1-121 AND 77-3-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1079

319 *(House Bill No. 20; Golie)* BENEFITING MULE DEER AND ELK BY ALLOWING THE ANNUAL ISSUANCE OF ONE MULE DEER LICENSE AND ONE ELK LICENSE THROUGH A COMPETITIVE AUCTION OR LOTTERY; ALLOWING THE AUCTION OR LOTTERY TO BE CONDUCTED BY A WILDLIFE CONSERVATION ORGANIZATION AND ALLOWING THE RETENTION OF 10 PERCENT OF SALE PROCEEDS BY THE WILDLIFE CONSERVATION ORGANIZATION TO COVER EXPENSES; AND DEDICATING THE REMAINING AUCTION OR LOTTERY PROCEEDS TO THE BENEFIT OF MULE DEER AND ELK 1082

320 *(House Bill No. 87; Jent)* PROHIBITING THE USE OF A PUNCHCARD VOTING SYSTEM IN AN ELECTION AFTER DECEMBER 31, 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1083

321 *(House Bill No. 123; Clark)* REDUCING THE MINIMUM AGE FOR PURCHASE OF A TRAPPER'S LICENSE FROM 13 YEARS OF AGE TO 12 YEARS OF AGE; REDUCING THE MAXIMUM AGE FOR PURCHASE OF A YOUTH TRAPPING LICENSE TO LESS THAN 12 YEARS OF AGE AND ELIMINATING THE LICENSE FEE; CLARIFYING THAT THE FISH, WILDLIFE, AND PARKS COMMISSION REGULATES TRAPPING; AMENDING SECTIONS 87-2-601, 87-2-603, AND 87-2-605, MCA; AND PROVIDING AN EFFECTIVE DATE 1084

322 *(House Bill No. 127; Fritz)* GENERALLY REVISING CONSUMER PROTECTION AND UNFAIR TRADE PRACTICES LAWS; DEFINING "CONSUMER" AND DELETING THE DEFINITION OF "NATIONAL ADVERTISING"; CLARIFYING EXEMPTIONS FROM THE PROVISIONS OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION MAY BRING AN ACTION TO RESTRAIN UNFAIR METHODS OF COMPETITION OR UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN LEWIS AND CLARK COUNTY WITHOUT CONSENT OF THE PARTIES; INCREASING THE MINIMUM DAMAGES FOR UNLAWFUL ACTS TO \$500; INCREASING THE MAXIMUM CIVIL FINE FOR UNLAWFUL ACTS TO \$10,000; MANDATING THAT THE DEPARTMENT HOLD A HEARING TO DECIDE IF A COST SURVEY SHOULD BE PERFORMED; DELETING PROVISIONS RELATING TO CERTAIN REBATES; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION'S OBLIGATION TO ENFORCE CERTAIN PROVISIONS OF THE UNFAIR TRADE PRACTICES LAWS IS PERMISSIVE RATHER THAN MANDATORY; INCREASING THE MAXIMUM PENALTY FOR A VIOLATION OF A DEPARTMENT ORDER UNDER THE UNFAIR TRADE PRACTICES LAWS TO \$10,000; INCREASING THE RECOVERY FOR A PERSON BRINGING AN ACTION UNDER THE UNFAIR TRADE PRACTICES LAWS AND PROVIDING FOR ATTORNEY FEES AND COSTS FOR

PREVAILING PARTIES; PROVIDING THAT A VIOLATION OF CERTAIN PROVISIONS OF THE UNFAIR TRADE PRACTICES LAWS MAY BE A FELONY RATHER THAN A MISDEMEANOR; GENERALLY REVISING LAWS REGARDING PERSONAL SOLICITATION SALES; REVISING THE DEFINITION OF "PERSONAL SOLICITATION"; ELIMINATING THE DISCLOSURE OBLIGATION EXEMPTION FOR NONPROFIT ORGANIZATIONS; INCREASING THE BUYER'S RECOVERY UNDER REVOKED PERSONAL SOLICITATION SALES; AMENDING SECTIONS 30-14-102, 30-14-105, 30-14-111, 30-14-131, 30-14-133, 30-14-142, 30-14-211, 30-14-219, 30-14-220, 30-14-222, 30-14-223, 30-14-224, 30-14-501, 30-14-502, 30-14-503, AND 30-14-506, MCA; REPEALING SECTION 30-14-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1085

323 *(House Bill No. 203; Olson)* GENERALLY REVISING LAWS GOVERNING BALLOT MEASURES; REVISING THE DEFINITION OF "SIGNATURE GATHERER"; CLARIFYING THAT PETITIONS FOR BALLOT MEASURES ARE TO BE CIRCULATED BY SIGNATURE GATHERERS; PROVIDING REQUIREMENTS FOR INTERNET POSTING OF PETITIONS FOR BALLOT MEASURES; REQUIRING PETITIONS FOR BALLOT MEASURES TO INCLUDE THE INITIALS OF THE PERSON SIGNING THE PETITION AND THE DATE WHEN THE FIRST SIGNATURE WAS GATHERED; CONFORMING REQUIREMENTS FOR SIGNATURES FOR INITIATIVE MEASURES AND INITIATIVES FOR CONSTITUTIONAL AMENDMENTS TO CONSTITUTIONAL REQUIREMENTS FOR GATHERING SIGNATURES IN ONE-HALF OF THE COUNTIES; REVISING REQUIREMENTS FOR SUBMISSION OF PETITION SHEETS FOR BALLOT MEASURES FOR VERIFICATION OF SIGNATURES; REQUIRING CERTIFICATION OF SIGNATURES ON PETITIONS FOR BALLOT MEASURES BY THE SIGNATURE GATHERER; AUTHORIZING THE SECRETARY OF STATE TO REJECT PETITIONS FOR BALLOT MEASURES SUBMITTED FOR TABULATION OF SIGNATURES THAT DO NOT MEET STATUTORY REQUIREMENTS; AMENDING SECTIONS 13-27-111, 13-27-201, 13-27-202, 13-27-204, 13-27-205, 13-27-206, 13-27-207, 13-27-301, 13-27-302, 13-27-303, 13-27-304, AND 13-27-307, MCA; AND PROVIDING AN EFFECTIVE DATE 1093

324 *(House Bill No. 303; Olson)* MODIFYING THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT AS IT RELATES TO TRANSMISSION LINES; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1101

325 *(House Bill No. 384; McKenney)* CREATING A DEMONSTRATION PROJECT THAT ALLOWS HEALTH INSURANCE ISSUERS TO OFFER A LIMITED COVERAGE INDIVIDUAL HEALTH BENEFIT PLAN OR A MANAGED CARE PLAN; PROVIDING THAT THE INSURER MUST SPECIFY CLEARLY WHICH STATE-REQUIRED BENEFITS OR COVERAGES ARE NOT INCLUDED IN THE OFFERED LIMITED COVERAGE INDIVIDUAL PLAN; AMENDING SECTIONS 33-22-301, 33-22-706, 33-30-1001, 33-31-111, 33-31-202, 33-31-301, 33-36-201, AND 33-36-205, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1103

326 *(House Bill No. 431; Lawson)* PROVIDING LOCAL GOVERNMENTS WITH THE RIGHT OF FIRST REFUSAL ON CERTAIN LANDS BEING SOLD BY THE STATE; AMENDING SECTION 77-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1113

327 *(House Bill No. 435; Sinrud)* CLARIFYING THAT A LEGISLATOR MAY NOT ACCEPT A FEE OR CERTAIN OTHER COMPENSATION FOR

SPEAKING TO A MONTANA STATE AGENCY OR POLITICAL SUBDIVISION; AMENDING SECTION 2-2-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1114

328 *(House Bill No. 602; Galvin-Halcro)* REQUIRING DEVELOPMENT OF A LEASING PREFERENCE GUIDELINE THAT ENCOURAGES COST-EFFICIENCY AND APPROPRIATE USE; REQUIRING A REPORT ON THE PREFERENCE GUIDELINE TO BE SUBMITTED TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE; AND PROVIDING AN EFFECTIVE DATE. 1115

329 *(Senate Bill No. 13; Mahlum)* SUBSTITUTING 0.08 FOR 0.10 IN THE LAWS RELATING TO DRIVING UNDER THE INFLUENCE AND DRIVING WITH AN ILLEGAL ALCOHOL CONCENTRATION IN THE BODY; REDUCING THE BLOOD ALCOHOL CONCENTRATION FROM 0.18 TO 0.16 FOR PURPOSES OF REQUIRING AN IGNITION INTERLOCK DEVICE; AMENDING SECTIONS 61-5-205, 61-5-208, 61-8-401, 61-8-406, 61-8-442, AND 61-11-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1115

330 *(Senate Bill No. 34; Barkus)* AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO IMPLEMENT AN EXPEDITED ACQUISITION PROCESS FOR ACQUIRING PROPERTY UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 60-4-104, 70-30-302, AND 70-30-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1120

331 *(Senate Bill No. 80; Laible)* PROHIBITING A LEGISLATIVE STANDING COMMITTEE FROM MEETING DURING THE INTERIM BETWEEN REGULAR LEGISLATIVE SESSIONS, EXCEPT IN CONJUNCTION WITH A SPECIAL SESSION OR TO PERFORM CERTAIN TASKS BEFORE A REGULAR SESSION 1124

332 *(Senate Bill No. 86; Zook)* REVISING ACCOUNTING, BUDGETING, AND APPROPRIATION LAWS; AUTHORIZING STATE SPECIAL AND OTHER FEDERAL FUND SWITCHES; CHANGING THE DATE FOR STATE AGENCIES TO ANNUALLY REPORT ACCOUNTING INFORMATION TO THE LEGISLATIVE FINANCE COMMITTEE; CLARIFYING THE CALCULATION OF BALANCED FINANCIAL PLANS THAT REDUCE THE PROPOSED BASE BUDGET FOR AGENCIES WITH MORE THAN 20 FTE; PROVIDING BUDGET AMENDMENT EXCEPTIONS FOR STATE SPECIAL REVENUE; AMENDING SECTIONS 17-2-108, 17-2-304, 17-7-111, AND 17-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE 1124

333 *(Senate Bill No. 166; Bales)* REVISING THE PADDLEFISH ROE DONATION PROGRAM; REVISING THE RESTRICTION THAT ONLY ROE FROM PADDLEFISH CAUGHT BETWEEN THE BURLINGTON NORTHERN RAILROAD BRIDGE AT GLENDIVE TO THE CONFLUENCE OF COTTONWOOD CREEK AND THE YELLOWSTONE RIVER IS ELIGIBLE FOR DONATION TO THE PROGRAM BY SPECIFYING A LONGER SECTION OF THE YELLOWSTONE RIVER; ADJUSTING THE PERCENTAGES OF PROGRAM PROCEEDS THAT ARE DIVIDED BETWEEN THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE NONPROFIT ORGANIZATION THAT PROCESSES AND MARKETS THE CAVIAR; EXTENDING THE PADDLEFISH ROE DONATION PROGRAM UNTIL JUNE 30, 2018; AMENDING SECTION 87-4-601, MCA, SECTION 5, CHAPTER 409, LAWS OF 1989, AND SECTION 2, CHAPTER 196, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1129

TITLE CONTENTS

334 *(Senate Bill No. 168; Stonington)* REQUIRING THAT MUNICIPALITIES ANNEX ROADS AND STREETS THAT ARE ADJACENT TO PROPERTY THAT IS BEING ANNEXED 1131

335 *(Senate Bill No. 241; Shea)* DEFINING “DEALER”, “MOTOR VEHICLE”, AND “NEW MOTOR VEHICLE” FOR THE PURPOSES OF SECTIONS 61-4-131 THROUGH 61-4-137, 61-4-141, AND 61-4-150, MCA, IN ORDER TO PROVIDE THAT THE RIGHT OF A DESIGNATED FAMILY MEMBER TO SUCCEED IN THE OWNERSHIP OR OPERATION OF A NEW MOTOR VEHICLE DEALERSHIP INCLUDES PERSONAL WATERCRAFT, SNOWMOBILE, AND OFF-HIGHWAY VEHICLES AND IN ORDER TO PROVIDE THAT A MANUFACTURER’S RIGHT OF FIRST REFUSAL AND A DEALER’S RIGHTS WITH RESPECT TO THE SALE, TRANSFER, OR EXCHANGE OF A DEALERSHIP APPLY TO PERSONAL WATERCRAFT, SNOWMOBILE, AND OFF-HIGHWAY VEHICLES; AND AMENDING SECTION 61-4-131, MCA 1132

336 *(Senate Bill No. 262; Perry)* CLARIFYING APPOINTMENT BY COUNTY COMMISSIONERS TO A VACANCY IN THE LEGISLATURE; CLARIFYING THE ROLE OF THE COUNTY CENTRAL COMMITTEE; REVISING THE TIMEFRAME FOR NOTIFICATIONS AND APPOINTMENT; CLARIFYING THE BEGINNING OF A TERM OF OFFICE FILLED BY AN APPOINTMENT; ALLOWING AN APPOINTMENT PRIOR TO AN ELECTION IF A SPECIAL LEGISLATIVE SESSION IS CALLED; AMENDING SECTIONS 5-2-402, 5-2-403, 5-2-404, 5-2-406, AND 5-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1133

337 *(Senate Bill No. 315; Schmidt)* PROVIDING FOR A FEASIBILITY STUDY TO ASSESS CONDITIONS AFFECTING RAIL FREIGHT COMPETITION IN MONTANA AND TO ANALYZE POSSIBILITIES TO IMPROVE RAIL FREIGHT COMPETITION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1136

338 *(Senate Bill No. 316; Grimes)* CLARIFYING ENERGY-RELATED TAX LAWS BY PROVIDING THAT THE DEPARTMENT OF REVENUE MAY REFER CLAIMS FOR DEDUCTIONS OR CREDITS FOR ENERGY CONSERVATION MEASURES TO THE DEPARTMENT OF LABOR AND INDUSTRY RATHER THAN THE DEPARTMENT OF ADMINISTRATION; CLARIFYING THAT THE MINERAL EXPLORATION INCENTIVE CREDIT MAY NOT EXCEED A TOTAL OF \$20 MILLION FOR ALL EXPLORATION ACTIVITIES; AND AMENDING SECTIONS 15-32-106, 15-32-503, AND 15-32-507, MCA 1137

339 *(Senate Bill No. 341; Thomas)* INCREASING FROM 30 TO 45 DAYS THE TIME REQUIRED FOR AN INSURER TO PROVIDE NOTICE TO A POLICYHOLDER OF A CANCELLATION, NONRENEWAL, OR RENEWAL WITH CHANGES OF PROPERTY OR CASUALTY INSURANCE, MOTOR VEHICLE LIABILITY INSURANCE, OR PRIVATE RESIDENCE INSURANCE; INCREASING THE NOTIFICATION REQUIREMENT FOR CANCELLATION OR NONRENEWAL OF POLICIES ISSUED TO A SPECIFIC GROUP OF PROFESSIONAL LIABILITY POLICYHOLDERS FROM 60 TO 120 DAYS; AMENDING SECTIONS 33-15-1104, 33-15-1105, 33-15-1106, 33-23-212, 33-23-214, 33-23-302, AND 33-23-401, MCA; AND PROVIDING AN APPLICABILITY DATE. 1139

340 *(Senate Bill No. 380; Bales)* AUTHORIZING THE TRUSTEES OF A HIGH SCHOOL OR K-12 PUBLIC SCHOOL DISTRICT TO ESTABLISH A STUDENT FINANCIAL INSTITUTION AT A HIGH SCHOOL; DEFINING “STUDENT FINANCIAL INSTITUTION”; AMENDING

SECTIONS 20-3-324, 32-1-102, 32-1-402, AND 32-3-106, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1142

341 *(Senate Bill No. 432; Grimes)* PROVIDING FOR LICENSED REAL ESTATE APPRAISAL TRAINEES WHO ARE AUTHORIZED ONLY TO ASSIST A CERTIFIED REAL ESTATE APPRAISER IN THE PERFORMANCE OF AN APPRAISAL ASSIGNMENT; PROVIDING QUALIFICATIONS; AND AMENDING SECTIONS 37-54-102, 37-54-202, AND 37-54-304, MCA 1147

342 *(Senate Bill No. 460; Story)* REVISING THE LAWS RELATING TO THE TAXATION OF METAL MINES; PROVIDING A DEFINITION OF "BASIC TREATMENT AND REFINERY CHARGES" FOR THE PURPOSES OF DETERMINING THE GROSS PROCEEDS TAX OF METAL MINES AND THE METALLIFEROUS MINES LICENSE TAX; CLARIFYING THE TAXATION OF PROCESSED CONCENTRATE UNDER THE METALLIFEROUS MINES LICENSE TAX; AMENDING SECTIONS 15-23-801 AND 15-37-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1149

343 *(House Bill No. 40; Newman)* GENERALLY REVISING THE LAWS RELATING TO AN INVESTIGATIVE STOP AND FRISK BY PEACE OFFICERS; ELIMINATING THE REQUIREMENT THAT A PEACE OFFICER PROVIDE A PERSON WITH CERTAIN INFORMATION PRIOR TO QUESTIONING OF THE PERSON AFTER AN INVESTIGATIVE STOP; AMENDING SECTION 46-5-401, MCA; AND REPEALING SECTION 46-5-402, MCA 1150

344 *(House Bill No. 54; Newman)* REVISING THE CRIMINAL LAWS RELATING TO STALKING, CHILD PORNOGRAPHY, DEFAMATION, AND PRIVACY IN COMMUNICATIONS TO INCLUDE ACTS INVOLVING THE USE OF ELECTRONIC COMMUNICATIONS; DEFINING "ELECTRONIC COMMUNICATION"; CHANGING THE VENUE FOR SOME OF THOSE CRIMES; AND AMENDING SECTIONS 45-5-220, 45-5-625, 45-8-212, 45-8-213, AND 46-3-112, MCA 1151

345 *(House Bill No. 170; Parker)* REVISING THE LAW RELATING TO REVOCATION OF A SUSPENDED OR DEFERRED SENTENCE BY PROVIDING THAT RECENT LEGISLATIVE CHANGES TO THE REVOCATION LAW APPLY RETROACTIVELY; AMENDING SECTION 46-18-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1155

346 *(House Bill No. 171; Parker)* PROVIDING THAT A CRIMINAL OFFENDER HAS 1 YEAR AFTER FINAL JUDGMENT TO WITHDRAW A PLEA OF GUILTY OR NOLO CONTENDERE; PROVIDING AN EXCEPTION; AMENDING SECTION 46-16-105, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1157

347 *(House Bill No. 388; Lake)* ALLOWING INDIVIDUAL OWNERS OF TRACTS OF LAND 3 ACRES OR SMALLER IN SIZE THAT ARE LOCATED WITHIN THE BOUNDARIES OF IRRIGATION DISTRICTS AND THAT ARE NOT BEING SERVED BY THE IRRIGATION DISTRICT WORKS TO BE ELIMINATED FROM FUTURE SERVICES, ASSESSMENTS OVER AND ABOVE CURRENT INDEBTEDNESS, AND LIABILITY UPON PAYMENT OF A SEVERANCE FEE OR NEGOTIATED AMOUNT; REQUIRING THAT OWNERS OF TRACTS LOCATED WITHIN AN IRRIGATION DISTRICT THAT HAS A CONTRACT WITH THE UNITED STATES BUREAU OF RECLAMATION MAY NOT PAY A SEVERANCE FEE OR NEGOTIATED AMOUNT TO BE EXCLUDED FROM FUTURE SERVICES, ASSESSMENTS, AND LIABILITY OF THE DISTRICT IF THAT WOULD IMPAIR THE

TITLECONTENTS

CONTRACT UNLESS THE PETITIONER COOPERATES WITH THE DISTRICT IN ORDER TO COMPLY WITH FEDERAL LAWS AND REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 1158

348 *(House Bill No. 524; Mendenhall)* PROVIDING FOR LICENSURE OF AN OUTDOOR BEHAVIORAL PROGRAM THAT ACCEPTS PUBLIC FUNDING; AMENDING SECTION 50-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1161

349 *(House Bill No. 532; Stoker)* REVISING THE PROCEDURE FOR THE ELECTION OF DRAINAGE DISTRICT COMMISSIONERS; PROVIDING THAT IF THE NUMBER OF CANDIDATES IS EQUAL TO OR LESS THAN THE NUMBER OF POSITIONS TO BE ELECTED, THE ELECTION ADMINISTRATOR MAY CANCEL THE ELECTION; PROVIDING FOR A DECLARATION OF ELECTION BY ACCLAMATION; PROVIDING FOR AN APPOINTMENT TO FILL A POSITION IF THERE ARE NO CANDIDATES; AMENDING SECTION 85-8-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1166

350 *(House Bill No. 17; Newman)* MAKING EXPLOITATION OF AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY A FELONY IF THE AMOUNT INVOLVED IS OVER \$1,000; AMENDING SECTIONS 52-3-803 AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1167

351 *(House Bill No. 76; McKenney)* ESTABLISHING CERTIFIED REGIONAL DEVELOPMENT CORPORATIONS AND TREASURE COMMUNITIES; REDIRECTING THE STATUTORY APPROPRIATION TO PROVIDE FUNDING TO CERTIFIED REGIONAL DEVELOPMENT CORPORATIONS; ESTABLISHING THE ECONOMIC DEVELOPMENT ADVISORY COUNCIL; PROVIDING FOR APPOINTMENT AND DUTIES OF ADVISORY COUNCIL; ABOLISHING THE MICROBUSINESS ADVISORY COUNCIL; AMENDING SECTIONS 15-35-108, 17-6-403, 90-1-116, AND 90-8-201, MCA; REPEALING SECTION 17-6-411, MCA; AND PROVIDING EFFECTIVE DATES 1169

352 *(House Bill No. 105; Olson)* GENERALLY REVISING, UPDATING, AND CLARIFYING PROVISIONS GOVERNING VEHICLE OPERATING REQUIREMENTS; ALLOWING A SLOW-MOVING VEHICLE TO TURN OFF OF A ROADWAY AT AREAS OTHER THAN THOSE DESIGNATED FOR THAT PURPOSE; MAKING CONSISTENT REFERENCES TO VARIOUS TYPES OF HIGHWAYS; REQUIRING OTHER VEHICLES TO YIELD THE RIGHT-OF-WAY TO VEHICLES ENGAGED IN MOBILE HIGHWAY MAINTENANCE; CLARIFYING THAT LOCAL AUTHORITIES HAVE THE OPTION OF DESIGNATING NO-PASSING ZONES; CLARIFYING THAT PROVISIONS GOVERNING NO-PASSING ZONES DO NOT APPLY WHEN A VEHICLE IS MAKING CERTAIN TURNING MOVEMENTS; PROVIDING FOR AND DEFINING ROUNDABOUTS; ALLOWING A PERSON TO CROSS DOUBLE YELLOW LINES IF TURNING INTO A PRIVATE ROAD OR DRIVEWAY; PROHIBITING A PERSON FROM PARKING A MOTOR VEHICLE IN A BICYCLE LANE; REGULATING TURNING WHERE A SPECIAL LANE HAS BEEN DESIGNATED FOR MAKING LEFT TURNS; PROHIBITING THE OPERATOR OF A MOTOR VEHICLE FROM INTERFERING WITH A BICYCLIST; MODIFYING THE PROVISIONS FOR STOPPING AT AND CROSSING RAILROAD GRADE CROSSINGS; ALLOWING A MOTORCYCLIST TO DRIVE WITHOUT THE HEADLAMP LIGHTED IF THE MOTORCYCLE IS BEING DRIVEN TO A REPAIR FACILITY; INCREASING THE FINE FOR THROWING CONTAINERS OF URINE OR FECES ON A HIGHWAY TO \$1,000; PROHIBITING SHOOTING A

	FIREARM FROM OR ACROSS THE RIGHT-OF-WAY OF ANY HIGHWAY; PROVIDING FOR THE ESTABLISHMENT OF SCHOOL CROSSING GUARDS; AMENDING SECTIONS 61-8-301, 61-8-303, 61-8-311, 61-8-312, 61-8-321, 61-8-323, 61-8-324, 61-8-325, 61-8-326, 61-8-327, 61-8-328, 61-8-329, 61-8-330, 61-8-331, 61-8-332, 61-8-333, 61-8-334, 61-8-336, 61-8-338, 61-8-340, 61-8-341, 61-8-342, 61-8-343, 61-8-344, 61-8-345, 61-8-346, 61-8-347, 61-8-348, 61-8-349, 61-8-350, 61-8-354, 61-8-355, 61-8-356, 61-8-359, 61-8-360, 61-8-361, 61-8-362, 61-8-363, 61-8-364, 61-8-365, 61-8-368, 61-8-369, 61-8-715, 61-9-402, 61-9-416, AND 61-9-431, MCA; AND REPEALING SECTION 61-8-315, MCA.	1176
353	<i>(House Bill No. 134; Weiss)</i> REVISING THE DISPOSITION OF FUNDS HELD BY OR FOR THE BENEFIT OF STATE PRISON INMATES; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 17-7-502 AND 53-1-107, MCA.	1200
354	<i>(House Bill No. 210; Shockley)</i> AUTHORIZING AN APPEAL TO DISTRICT COURT BASED UPON THE DENIAL OF A MOTION TO WITHDRAW A PLEA OF GUILTY OR NOLO CONTENDERE BY A COURT OF LIMITED JURISDICTION; PROVIDING A TIME FOR AN APPEAL; AMENDING SECTIONS 46-17-203 AND 46-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	1202
355	<i>(House Bill No. 223; Lawson)</i> CREATING THE STATE LAND BANK FUND; REVISING THE LAWS RELATING TO THE SALE OF STATE TRUST LAND AND THE DISPOSITION OF PROCEEDS; PROHIBITING THE SALE OF LAND TO THE FEDERAL GOVERNMENT; AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO ACQUIRE LANDS FOR THE FINANCIAL BENEFIT OF TRUST BENEFICIARIES; PROVIDING A STATUTORY APPROPRIATION FOR THE FUNDING OF STATE LAND BANK FUNCTIONS, INCLUDING THE ACQUISITION OF TRUST LANDS; PROHIBITING CREATION OF RIGHT OF ACCESS; PROVIDING A DEADLINE FOR LAND SALES UNDER THE LAND BANKING PROCESS; REQUIRING A REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTIONS 17-3-1003, 17-7-502, 18-2-107, 77-1-109, 77-2-301, 77-2-306, 77-2-309, 77-2-323, 77-2-328, AND 77-2-337, MCA; REPEALING SECTIONS 77-2-307 AND 77-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1204
356	<i>(House Bill No. 224; Shockley)</i> REVISING LAWS RELATING TO STANDING MASTERS; REMOVING THE AUTHORITY OF COUNTIES TO APPOINT STANDING MASTERS; REMOVING THE AUTHORITY OF WATER JUDGES TO SET THE SALARY OF WATER MASTERS; REMOVING THE REQUIREMENT THAT WATER MASTERS PARTICIPATE IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REPEALING SECTIONS 3-5-123 AND 3-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1211
357	<i>(House Bill No. 237; Brueggeman)</i> REQUIRING A MOTOR VEHICLE EQUIPPED WITH AN ENGINE COMPRESSION BRAKE DEVICE TO HAVE A MUFFLER; ALLOWING USE OF AN ENGINE COMPRESSION BRAKE DEVICE EQUIPPED WITH A MUFFLER; PROVIDING A PENALTY; AND PROVIDING A DELAYED APPLICABILITY DATE	1212
358	<i>(House Bill No. 317; Shockley)</i> ALLOWING A SENTENCING COURT TO REQUIRE A PERSON CONVICTED OF CRUELTY TO ANIMALS TO PAY THE REASONABLE COSTS INCURRED BY A PUBLIC OR PRIVATE ANIMAL CONTROL AGENCY OR HUMANE ANIMAL TREATMENT SHELTER FOR THE CARE OF THE ANIMAL; AMENDING SECTION 45-8-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	

359	(<i>House Bill No. 337; Ripley</i>)	REQUIRING THAT THE EXPENSE OF MOVING UTILITY WIRES AND POLES WHEN RELOCATING A STRUCTURE BE PAID BY THE PERSON, FIRM, OR CORPORATION MOVING THE STRUCTURE; PROVIDING AN EXCEPTION; REQUIRING A PAYMENT TO THE OWNER OF THE WIRES AND POLES IN ADVANCE OF THE MOVE; AMENDING SECTIONS 69-4-602 AND 69-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1212
360	(<i>House Bill No. 385; Fritz</i>)	PROVIDING THAT MONTANA NEW MOTOR VEHICLE WARRANTY LAWS APPLY TO MOTOR VEHICLES REGISTERED IN THIS STATE IN ADDITION TO MOTOR VEHICLES SOLD IN THIS STATE; INCLUDING MOTORCYCLES AS VEHICLES COVERED BY REGISTRATION; SUBSTITUTING SELECTION OF AN ARBITRATOR FOR SELECTION OF AN ARBITRATION PANEL AND DECREASING THE NUMBER OF ARBITRATORS FROM THREE TO ONE; AND AMENDING SECTIONS 61-4-501, 61-4-516, 61-4-518, AND 61-4-519, MCA	1213
361	(<i>House Bill No. 437; Olson</i>)	GENERALLY REVISING LAWS GOVERNING THE ENVIRONMENT; PROVIDING THAT THE ENACTMENT OF CERTAIN LEGISLATION IS THE LEGISLATIVE IMPLEMENTATION OF ARTICLE II, SECTION 3, AND ARTICLE IX OF THE MONTANA CONSTITUTION AND PROVIDING THAT COMPLIANCE WITH THE REQUIREMENTS OF THE LEGISLATIVE IMPLEMENTATION CONSTITUTES ADEQUATE REMEDIES AS REQUIRED BY THE CONSTITUTION; REQUIRING THAT A CHALLENGE TO A PERMIT ISSUED PURSUANT TO THE AIR QUALITY LAWS OR OPENCUT MINING RECLAMATION LAWS, A CHALLENGE TO A LICENSE OR PERMIT ISSUED PURSUANT TO THE METAL MINE RECLAMATION LAWS, A CHALLENGE TO A CERTIFICATE ISSUED PURSUANT TO THE MONTANA MAJOR FACILITY SITING ACT, OR AN AMENDMENT ISSUED PURSUANT TO THE OPENCUT MINING RECLAMATION LAWS MUST PROVIDE FOR COSTS AND ATTORNEY FEES IF THE CHALLENGE WAS FOR AN IMPROPER PURPOSE; PROVIDING THAT AN ACTION CHALLENGING THE ISSUANCE OF A PERMIT UNDER THE AIR QUALITY LAWS, THE ISSUANCE OF AN AMENDMENT UNDER THE OPENCUT MINING RECLAMATION LAWS, THE ISSUANCE OF A LICENSE OR PERMIT UNDER THE METAL MINE RECLAMATION LAWS, A PETITION FOR REVIEW CHALLENGING A LICENSING OR PERMITTING DECISION UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT, AN ARBITRATION ACTION UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975, ANY ACTION UNDER THE HAZARDOUS WASTE FACILITIES LAWS OR THE MONTANA ENVIRONMENTAL POLICY ACT, ENTRY AND INSPECTION UNDER THE COAL AND URANIUM MINE RECLAMATION LAWS, OR A CERTIFICATE ISSUED UNDER THE MAJOR FACILITY SITING LAWS MUST BE BROUGHT IN THE COUNTY IN WHICH THE ACTIVITY SUBJECT TO THE PERMIT, PETITION FOR REVIEW, AMENDMENT, LICENSE, ARBITRATION, ACTION, CERTIFICATE, OR INSPECTION WILL OCCUR; PROVIDING THAT FOR AN ACTIVITY THAT WILL OCCUR IN MORE THAN ONE COUNTY, ANY COUNTY IN WHICH THE ACTIVITY WILL OCCUR IS A PROPER VENUE; PROVIDING THAT CERTAIN PERSONS MAY NOT CONDUCT REMEDIAL ACTIONS CONCERNING CLEANUP ACTIVITIES AT ANY FACILITY THAT IS SUBJECT TO AN ADMINISTRATIVE OR JUDICIAL ORDER; AMENDING SECTIONS 2-4-702, 2-4-704, 50-40-102, 75-1-102, 75-1-103, 75-2-102, 75-2-104, 75-5-101, 75-5-102, 75-7-102, 75-7-121, 75-10-202, 75-10-402, 75-10-420, 75-10-706, 75-10-902, 75-11-202, 75-11-301, 75-11-502, 75-20-102,	

MONTANA SESSION LAWS 2003

lviii

75-20-201, 75-20-401, 75-20-406, 76-6-102, 76-7-102, 82-4-102, 82-4-202, 82-4-239, 82-4-252, 82-4-301, 82-4-349, 82-4-402, 82-4-427, 82-4-436, AND 87-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1218

362 (House Bill No. 451; Clark) ALLOWING PRIVATE CORRECTIONAL FACILITIES TO CONFINЕ OUT-OF-STATE INMATES; AMENDING SECTION 53-30-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1241

363 (House Bill No. 453; Raser) PROVIDING FOR THE USE OF A PRISON INMATE'S FUNDS, INCOME, AND ASSETS TO PAY THE INMATE'S MEDICAL AND DENTAL EXPENSES; AND AMENDING SECTION 53-1-107, MCA 1241

364 (House Bill No. 480; Steinbeisser) INCREASING THE PENALTIES FOR CERTAIN VIOLATIONS REGARDING MOTOR VEHICLE ACCIDENTS; INCREASING THE RATE AT WHICH FINES MAY BE COMMUTED BY JAIL TIME; AND AMENDING SECTION 61-7-118, MCA 1242

365 (House Bill No. 527; Mendenhall) REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND APPLICANTS FOR OPERATING PERMITS UNDER THE METAL MINE RECLAMATION ACT TO CONSIDER THE UTILIZATION OF FACILITIES CONSTRUCTED IN CONJUNCTION WITH MINING OPERATIONS FOR POSTMINING USES IN LIEU OF REQUIRING THE REMOVAL OF THE FACILITIES; PROVIDING THAT ANCILLARY INDUSTRIAL FACILITIES MAY HAVE AN ACCEPTABLE POSTMINING USE; PROVIDING THAT AN AMENDMENT TO AN OPERATING PERMIT FOR THE PURPOSE OF RETENTION OF MINE-RELATED FACILITIES THAT ARE VALUABLE FOR POSTMINING USE IS A MINOR AMENDMENT AND DOES NOT REQUIRE THE PREPARATION OF AN ENVIRONMENTAL REVIEW OR AN ENVIRONMENTAL IMPACT STATEMENT; AMENDING SECTIONS 82-4-303, 82-4-335, 82-4-336, AND 82-4-342, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1243

366 (House Bill No. 553; Gallik) REVISING THE LAWS GOVERNING THE TREATMENT OF ANIMALS; PROVIDING FOR A CIVIL HEARING CONCERNING THE CARE OF ANIMALS SEIZED WHEN THE OWNER IS CHARGED WITH CRUELTY TO ANIMALS; CHANGING THE FINE AND IMPRISONMENT PENALTIES FOR THE CRIME; CREATING THE OFFENSE OF "AGGRAVATED ANIMAL CRUELTY"; EXPANDING THE LIST OF EXEMPT ACTIVITIES AND PRACTICES; AND AMENDING SECTION 45-8-211, MCA 1252

367 (House Bill No. 563; Laszloffy) GENERALLY REVISING ELECTION LAWS; PROHIBITING A THIRD PARTY FROM COLLECTING ABSENTEE BALLOT APPLICATIONS TO FORWARD TO AN ELECTION ADMINISTRATOR, WITH CERTAIN EXCEPTIONS; ALLOWING POLITICAL PARTY COMMITTEEMEN FOR AN ELECTION PRECINCT TO BE ELECTED BY ACCLAMATION; ALLOWING COMMISSIONERS OF A DRAINAGE DISTRICT TO BE ELECTED BY ACCLAMATION; AND AMENDING SECTIONS 13-13-213, 13-38-201, 85-8-302, AND 85-8-624, MCA 1254

368 (House Bill No. 584; Barrett) REVISING THE CONTROLLED ALLOCATION OF LIABILITY LAWS; ELIMINATING THE TERMINATION DATE FOR THE CONTROLLED ALLOCATION OF LIABILITY ACT; AMENDING SECTION 75-10-743, MCA; REPEALING SECTION 75-10-752, MCA, AND SECTION 30, CHAPTER 415, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1257

369 *(Senate Bill No. 152; Cocchiarella)* REVISING THE QUALIFICATIONS, PROCEDURES, AND FEES FOR OBTAINING SPECIAL PERMITS TO SELL BEER AND TABLE WINE; DEFINING "SPECIAL EVENT"; REVISING CATERING REQUIREMENTS; AMENDING SECTIONS 16-1-106, 16-4-111, 16-4-204, 16-4-301, AND 16-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1259

370 *(Senate Bill No. 159; Johnson)* PROVIDING THAT CERTAIN PROPERTY OWNED BY A RAILROAD AND LEASED BY A NONPROFIT ORGANIZATION OR A GOVERNMENT ENTITY IS EXEMPT FROM PROPERTY TAXES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1267

371 *(Senate Bill No. 284; Wheat)* REVISING THE PROCEDURE A COUNTY AUDITOR IS REQUIRED TO FOLLOW TO PROCESS A CLAIM; ESTABLISHING TIMEFRAMES WITHIN WHICH INVESTIGATION OF CERTAIN CLAIMS MUST BE COMPLETED; PROVIDING TIMEFRAMES AND PROCEDURES FOR DISAPPROVING A CLAIM; AUTHORIZING A BOARD OF COUNTY COMMISSIONERS, UPON A MAJORITY VOTE, TO ORDER PAYMENT OF A CLAIM DISAPPROVED BY A COUNTY AUDITOR; PROVIDING FOR AN APPEAL TO DISTRICT COURT WITHIN 7 WORKING DAYS IF A BOARD OF COUNTY COMMISSIONERS ORDERS PAYMENT OF A DISAPPROVED CLAIM; AMENDING SECTION 7-6-2407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1268

372 *(Senate Bill No. 334; Sprague)* INCREASING THE NUMBER OF REPRESENTATIVES WHO MAY BE HIRED BY A VENDOR PROMOTING THE VENDOR'S PRODUCT IN THE STATE; REQUIRING THAT A VACANCY IN THE ONE REQUIRED REPRESENTATIVE POSITION BE FILLED WITHIN 60 DAYS; AND AMENDING SECTION 16-3-107, MCA 1269

373 *(House Bill No. 50; Haines)* GENERALLY REVISING THE MONTANA FOOD, DRUG, AND COSMETIC ACT; REDEFINING THE TERM "BOTTLED WATER" TO CONFORM TO FEDERAL LAW; ELIMINATING REQUIREMENTS FOR WATER BOTTLERS UNDER THE ACT; DEFINING "DIETARY SUPPLEMENT" AND ADDING THE TERM TO THE DEFINITION OF "FOOD"; CLARIFYING THAT A FOOD SERVICE ESTABLISHMENT MEANS A PLACE THAT SERVES FOOD AT RETAIL TO THE PUBLIC; CLARIFYING THE DEFINITION OF "RETAIL MEAT ESTABLISHMENT"; ELIMINATING PERMIT REQUIREMENTS FOR MANUFACTURING, PROCESSING, OR PACKAGING FOOD BECAUSE THOSE REQUIREMENTS ARE PROVIDED FOR ELSEWHERE IN STATE LAW; AMENDING SECTIONS 50-31-103, 50-31-110, 50-31-208, 50-31-312, AND 50-31-501, MCA; AND REPEALING SECTIONS 50-31-205, 50-31-206, 50-31-207, 50-31-236, AND 50-31-238, MCA 1270

374 *(House Bill No. 67; Kaufmann)* GENERALLY REVISING AND UPDATING PROVISIONS GOVERNING PEDESTRIANS; ELIMINATING STATUTORY PROVISION FOR SCHOOL SAFETY PATROLS; PROHIBITING A VEHICLE OPERATOR FROM DRIVING PAST A SCHOOL CROSSING GUARD DIRECTING CHILDREN; DIRECTING WHERE A PEDESTRIAN MAY WALK WHEN SIDEWALKS OR SHOULDERS ARE NOT AVAILABLE; RESTRICTING STANDING ON A ROADWAY OR HIGHWAY FOR SOLICITING RIDES, BUSINESS, OR CONTRIBUTIONS; PROHIBITING A PERSON WHO IS UNDER THE INFLUENCE OF ALCOHOL OR ANY ILLEGAL DRUG FROM WALKING OR STANDING ON A ROADWAY OR SHOULDER EXCEPT IN AN AUTHORIZED CROSSWALK; REQUIRING PEDESTRIANS TO YIELD TO EMERGENCY VEHICLES; REQUIRING OPERATORS OF

VEHICLES TO YIELD TO BLIND PEDESTRIANS; PROHIBITING PEDESTRIANS FROM ENTERING A RAILROAD GRADE CROSSING WHILE BARRIERS ARE CLOSED OR BEING OPENED OR CLOSED; AMENDING SECTIONS 20-3-106, 61-8-501, 61-8-502, 61-8-504, 61-8-506, 61-8-507, AND 61-8-508, MCA; AND REPEALING SECTION 20-1-408, MCA. 1278

375 *(House Bill No. 98; McKenney)* GENERALLY REVISING LAWS RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSING; PROVIDING THAT THE ADOPTION OF CERTAIN RULES BY THE BOARD OF ATHLETICS IS DISCRETIONARY; PROVIDING THAT CERTAIN BOXING AND WRESTLING LICENSES ARE NOT RENEWABLE; PROVIDING THAT THE ADOPTION OF CERTAIN RULES BY THE BOARD OF PUBLIC ACCOUNTANTS IS DISCRETIONARY; PROVIDING THAT THE CREDENTIALS OF A FOREIGN ACCOUNTANT BE RECOGNIZED RATHER THAN REGISTERED; EXPANDING THE GROUNDS FOR WAIVING AN EXAMINATION FOR FOREIGN OR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTANTS AND LICENSED PUBLIC ACCOUNTANTS; PROVIDING THAT THE BOARD OF REALTY REGULATION MAY REQUIRE SPECIFIC PERFORMANCE LEVELS OF LICENSEES WHO TAKE CERTAIN KINDS OF CONTINUING EDUCATION COURSES; REQUIRING FINGERPRINT CHECKS FOR LICENSE APPLICANTS BY THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING LICENSE APPLICATION REQUIREMENTS FOR APPLICANTS OTHER THAN INDIVIDUALS APPLYING FOR LICENSURE BY THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; ELIMINATING THE REQUIREMENT FOR MAINTAINING A DIRECTORY OF REAL ESTATE BROKERS AND SALESPERSONS; ELIMINATING THE REQUIREMENT FOR MAINTAINING A ROSTER OF LICENSED AND CERTIFIED REAL ESTATE APPRAISERS; AMENDING SECTIONS 23-3-405, 23-3-501, 37-50-102, 37-50-203, 37-50-301, 37-50-311, 37-50-312, 37-50-313, 37-50-335, 37-51-204, 37-60-303, AND 37-60-304, MCA; REPEALING SECTIONS 37-51-307 AND 37-54-110, MCA; AND PROVIDING AN EFFECTIVE DATE. 1283

376 *(House Bill No. 104; Bergren)* REVISING THE QUALIFICATIONS FOR A VOLUNTARY PURCHASING POOL; DECREASING THE NUMBER OF REQUIRED EMPLOYEES FROM 1,000 TO 51; ELIMINATING THE OPTION OF USING RATING ARRANGEMENTS TO OFFER DISABILITY INSURANCE POLICIES, CERTIFICATES, OR CONTRACTS THROUGH A POOL THAT RATES EACH MEMBER EMPLOYER SEPARATELY; REQUIRING CONTRACTS OFFERED THROUGH A POOL TO RATE AN ENTIRE GROUP AS A WHOLE AND TO CHARGE EACH INSURED PERSON BASED ON A COMMUNITY RATE WITHIN THE COMMON GROUP AS PERMITTED BY LAWS GOVERNING GROUP DISABILITY INSURANCE; AND AMENDING SECTION 33-22-1815, MCA. 1290

377 *(House Bill No. 110; Lange)* ELIMINATING THE AMOUNT FOR WHICH AN INJURED WORKER IS LIABLE TO ALL MEDICAL SERVICE PROVIDERS, EXCEPT FOR A HOSPITAL EMERGENCY DEPARTMENT, FOR TREATMENT RELATED TO A COMPENSABLE INJURY OR OCCUPATIONAL DISEASE AFTER THE INITIAL VISIT; PROVIDING THAT A WORKER IS NOT RESPONSIBLE FOR THE COST OF A SUBSEQUENT VISIT TO AN EMERGENCY DEPARTMENT FOR TREATMENT REQUESTED BY AN INSURER; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1291

378	<i>(House Bill No. 130; Lewis)</i>	REVISING THE PROMPT PAY PROVISIONS FOR INSURERS; MODIFYING THE DEFINITION OF "PROOF OF LOSS"; DEFINING "CLAIM DOCUMENTATION"; REVISING THE TIME PERIOD FOR PAYMENT OF CLAIMS BY AN INSURER; REQUIRING PROMPT PAYMENT OF MOTOR VEHICLE DAMAGE CLAIMS; REVISING THE ADMINISTRATIVE PENALTY PROVISIONS FOR FAILURE OF AN INSURER TO PROMPTLY PAY CLAIMS; PROVIDING THAT COMPLIANCE OR NONCOMPLIANCE WITH PROMPT PAYMENT REQUIREMENTS MAY NOT BE USED AS A BASIS FOR PRIVATE CAUSE OF ACTION OR ADMISSIBLE AS EVIDENCE IN A PRIVATE ACTION; AND AMENDING SECTIONS 33-18-231, 33-18-232, AND 33-18-233, MCA	1294
379	<i>(House Bill No. 141; Lange)</i>	REDEFINING THE CRIMINAL CONDUCT OF AND INCREASING THE PENALTIES FOR FLEEING FROM OR ELUDING A PEACE OFFICER; AND AMENDING SECTIONS 61-5-205, 61-8-301, 61-8-715, 61-9-402, AND 61-9-431, MCA.	1296
380	<i>(House Bill No. 145; McKenney)</i>	GENERALLY REVISING THE STATE INSURANCE CODE; ALLOWING INSURANCE COMPANIES TO USE BOOK-ENTRY SYSTEMS WITH RESPECT TO THEIR SECURITIES AND PROVIDING THE INSURANCE COMMISSIONER WITH RULEMAKING AUTHORITY; DEFINING "DISABILITY INCOME INSURANCE"; MODIFYING REQUIREMENTS AND PENALTIES FOR SURPLUS LINES PRODUCERS; PROVIDING THAT CERTAIN FEES AND PENALTIES BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE STATE AUDITOR RATHER THAN DEPOSITING THEM INTO THE GENERAL FUND; REVISING VARIOUS INCORPORATION REQUIREMENTS; CHANGING REPORTING REQUIREMENTS WITH RESPECT TO AN INDIVIDUAL OBTAINING 10 PERCENT OR MORE OF ANY CLASS OF EQUITY SECURITY IN A DOMESTIC STOCK INSURANCE COMPANY; REVISING THE DEFINITION OF "INSOLVENT INSURER"; CHANGING THE PENALTY FOR MISAPPROPRIATION OF INSURANCE PREMIUMS; MODIFYING INCONTESTABILITY PROVISIONS FOR DISABILITY BENEFITS AND CERTAIN DEATH BENEFITS; ALLOWING A GROUP INSURER TO CONTRACT WITH ANOTHER INSURER FOR CONVERSION POLICIES; MODIFYING COVERAGE FOR WELL-CHILD CARE; MODIFYING THE DEFINITION OF "THEFT" TO INCLUDE MISAPPROPRIATION OF INSURANCE PREMIUMS; AMENDING SECTIONS 33-1-408, 33-1-705, 33-1-1202, 33-2-115, 33-2-307, 33-2-326, 33-2-708, 33-3-201, 33-3-441, 33-4-101, 33-4-202, 33-10-102, 33-10-207, 33-16-403, 33-17-503, 33-17-511, 33-17-1102, 33-17-1204, 33-20-101, 33-20-103, 33-20-105, 33-20-114, 33-20-1202, 33-20-1203, 33-20-1204, 33-20-1205, 33-20-1206, 33-20-1207, 33-20-1209, 33-20-1210, 33-20-1213, 33-22-101, 33-22-107, 33-22-303, 33-22-512, 33-22-1512, 33-22-1513, 33-23-212, 33-30-102, 33-30-107, 33-30-204, 33-31-111, 33-31-212, 33-35-306, 45-6-301, AND 50-3-109, MCA; AND REPEALING SECTION 17-2-121, MCA	1301
381	<i>(House Bill No. 157; Haines)</i>	REPEALING THE REQUIREMENT FOR PROCUREMENT AND SALE OF ARTWORK FOR A MIGRATORY BIRD STAMP; REQUIRING THAT FUNDS RECEIVED FROM THE SALE OF MIGRATORY GAME BIRD LICENSES BE EXPENDED FOR THE PROTECTION, CONSERVATION, AND DEVELOPMENT OF WETLANDS IN MONTANA; PROVIDING THAT MIGRATORY GAME BIRD HUNTERS MUST BE REPRESENTED ON THE ADVISORY COUNCIL THAT REVIEWS PROPOSALS FOR EXPENDITURE OF THE FUNDS; AMENDING SECTIONS 2-15-3405, 87-1-601, AND 87-2-411,	

	MCA; REPEALING SECTION 87-2-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1328
382	<i>(House Bill No. 161; Matthews)</i> CLARIFYING THE LAW RELATING TO THE RIGHT OF A YOUTH TO WAIVE A PAROLE REVOCATION HEARING; AMENDING SECTION 52-5-129, MCA; AND PROVIDING AN EFFECTIVE DATE	1330
383	<i>(House Bill No. 179; Matthews)</i> REVISING THE LAWS RELATING TO CAPTIVE INSURANCE COMPANIES; PROVIDING FOR SPONSORED CAPTIVE AND BRANCH CAPTIVE INSURANCE COMPANIES; ALLOWING RECIPROCAL INSURERS TO BE AN ASSOCIATION CAPTIVE INSURANCE COMPANY; ALLOWING AN ASSOCIATION CAPTIVE INSURANCE COMPANY OR INDUSTRIAL INSURED GROUP FORMED AS A STOCK OR MUTUAL CORPORATION TO CONVERT TO OR MERGE WITH A RECIPROCAL INSURER; ALLOWING A CAPTIVE INSURANCE COMPANY TO PROVIDE EXCESS WORKERS' COMPENSATION INSURANCE, PROPERTY INSURANCE, CASUALTY INSURANCE, LIFE INSURANCE, DISABILITY INCOME INSURANCE, AND HEALTH INSURANCE COVERAGE; DEFINING "DISABILITY INCOME INSURANCE"; REQUIRING CAPTIVE INSURANCE COMPANIES TO FILE REPORTS WITH THE COMMISSIONER OF INSURANCE; REQUIRING CAPTIVE INSURANCE AND BRANCH BUSINESS COMPANIES TO PAY A TAX ON PREMIUMS; REQUIRING A CAPTIVE INSURANCE COMPANY TO OBTAIN A CERTIFICATE FROM THE COMMISSIONER OF INSURANCE BEFORE ITS FORMATION; AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-107, 33-28-108, 33-28-201, AND 33-28-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1332
384	<i>(House Bill No. 183; Steinbeisser)</i> REQUIRING 45-DAY OR 60-DAY NOTICES FOR HEALTH INSURANCE POLICY RATE CHANGES OR BENEFIT MODIFICATIONS AND PROVIDING FOR DELIVERY OF THE NOTICES; REQUIRING NOTICE FOR CANCELLATION FOR NONPAYMENT OF GROUP HEALTH INSURANCE PREMIUMS; REVISING REQUIREMENTS REGARDING CERTIFICATES OF CREDITABLE COVERAGE; AMENDING SECTIONS 33-22-107, 33-22-122, 33-22-141, 33-22-142, 33-30-1007, 33-31-111, AND 33-35-306, MCA; REPEALING SECTION 33-30-307, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE	1345
385	<i>(House Bill No. 205; Franklin)</i> REVISING MONTANA'S INSURANCE PRIVACY LAWS TO COMPLY WITH THE FEDERAL GRAMM-LEACH-BLILEY ACT AND THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996; ALLOWING A LIMITED EXEMPTION FROM THE PRIVACY ACT FOR ENTITIES COVERED BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 PRIVACY REGULATIONS; REQUIRING NATIONAL NOTICE FORMS TO REFER TO THE SPECIFIC STATE NOTICE FORM; AUTHORIZING DISCLOSURE OF CERTAIN NONMEDICAL INFORMATION TO A LIENHOLDER, MORTGAGEE, ASSIGNEE, OR LESSOR; AMENDING SECTIONS 33-19-104, 33-19-105, 33-19-202, 33-19-301, 33-19-306, AND 33-19-307, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE	1351
386	<i>(House Bill No. 222; Parker)</i> ALLOWING A JUDGE WHO REVOKES A SENTENCE SUSPENSION TO IMPOSE ANY SENTENCE THAT COULD HAVE BEEN IMPOSED THAT IS NOT LONGER THAN THE ORIGINAL SENTENCE; IMPOSING A SUPERVISORY FEE ON PERSONS SUPERVISED BY THE DEPARTMENT OF CORRECTIONS UNDER	

INTENSIVE SUPERVISION OR CONDITIONAL RELEASE OR TRANSFERRING THEIR SUPERVISION TO ANOTHER STATE; PROVIDING A PROCEDURE FOR SUSPENDING ALL OR PART OF THE REMAINING IMPRISONMENT SENTENCE OF A PERSON WHO SUCCESSFULLY COMPLETES THE STATE BOOT CAMP; GIVING PROBATION AND PAROLE OFFICERS AUTHORITY TO DETAIN A PERSON UNDER LIMITED CIRCUMSTANCES AND TO TURN THE PERSON OVER TO A LAW ENFORCEMENT AGENCY OR PEACE OFFICER; AMENDING SECTIONS 46-18-203, 46-23-1031, AND 53-30-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1365

387 *(House Bill No. 269; Bergren)* REVISING THE DEPARTMENT OF JUSTICE'S AND THE DEPARTMENT OF ADMINISTRATION'S RESPONSIBILITIES REGARDING FIRE PROTECTION AND FIRE PREVENTION; REMOVING CERTAIN REQUIREMENTS FOR KEEPING FIRE INCIDENT RECORDS; REMOVING THE REQUIREMENT THAT FIRE PREVENTION AND INVESTIGATION RULES ADOPTED BY THE DEPARTMENT OF JUSTICE INCLUDE CERTAIN BUILDING EQUIPMENT AND SYSTEMS; REQUIRING GENERAL LIABILITY INSURANCE RATHER THAN A BOND FOR PUBLIC DISPLAYS OF FIREWORKS; REDEFINING OCCUPANCY OF BUILDINGS OR STRUCTURES FOR A BROAD RANGE OF PURPOSES; CHANGING THE FREQUENCY FOR FIRE INSPECTIONS IN SCHOOLS FROM 12 MONTHS TO 18 MONTHS; REMOVING CERTAIN REQUIREMENTS FOR FIRE INCIDENT REPORTS; REVISING CERTAIN PROVISIONS RELATED TO FIRE PROTECTION AND HAZARDOUS MATERIALS STORAGE FOR STATE-OWNED BUILDINGS AND ELIMINATING REVIEW RESPONSIBILITIES FOR ARCHITECTURAL PLANS PRESENTED TO LOCAL GOVERNMENTS; AMENDING SECTIONS 2-17-112, 50-3-102, 50-3-103, 50-37-108, 50-61-101, 50-61-103, 50-61-114, AND 50-63-203, MCA; AND REPEALING SECTIONS 50-61-112 AND 50-61-113, MCA. 1368

388 *(House Bill No. 289; Newman)* INCREASING THE SANCTIONS IMPOSED UPON A DRIVER WHO REFUSES TO SUBMIT TO A BLOOD OR BREATH TEST BY PROVIDING A REBUTTABLE INFERENCE THAT A PERSON WHO REFUSES A TEST IS UNDER THE INFLUENCE; AND AMENDING SECTION 61-8-404, MCA 1375

389 *(House Bill No. 358; Lange)* GENERALLY REVISING THE LAWS GOVERNING MUNICIPAL COURTS AND JUSTICES' COURTS; REVISING THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR MUNICIPAL COURT JUDGES; ALLOWING A COUNTY TO ESTABLISH A JUSTICE'S COURT AS A COURT OF RECORD; PROVIDING THAT THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR A JUSTICE OF THE PEACE SERVING IN A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE THE SAME AS FOR A MUNICIPAL COURT JUDGE; PROVIDING THAT APPEALS FROM A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE ON THE RECORD AND NOT DE NOVO; AUTHORIZING A MUNICIPAL COURT JUDGE OR A JUSTICE OF THE PEACE FOR A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD TO ACT AS A JUDGE PRO TEMPORE IN A DISTRICT COURT; PROVIDING A GRANDFATHER CLAUSE FOR EXISTING JUSTICES OF THE PEACE; AMENDING SECTIONS 3-5-114, 3-6-102, 3-6-202, 3-6-204, 3-10-101, 3-10-203, 3-10-207, 25-33-301, AND 46-17-311, MCA; AND PROVIDING AN EFFECTIVE DATE 1376

390 *(House Bill No. 481; Lewis)* IMPOSING A UTILIZATION FEE ON HOSPITAL FACILITIES FOR INPATIENT BED DAYS; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT AND DEPOSIT FEES

	IN A STATE SPECIAL REVENUE ACCOUNT FOR FUNDING INCREASES IN MEDICAID PAYMENTS TO HOSPITALS; PROVIDING FOR ASSESSMENT, COLLECTION, AND ADJUSTMENT OF THE FEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, A TERMINATION DATE, AND A CONTINGENT VOIDNESS PROVISION.	1382
391	<i>(House Bill No. 499; Franklin)</i> REVISING EMERGENCY HEALTH POWERS AND COMMUNICABLE DISEASE LAWS TO ENSURE THE ABILITY TO ADEQUATELY RESPOND TO INCIDENTS AND DISASTERS INVOLVING BIOTERRORISM AND WEAPONS OF MASS DESTRUCTION; DEFINING TERMS; AMENDING SECTIONS 10-3-103, 45-5-623, 50-1-101, 50-1-202, 50-1-204, 50-2-101, 50-2-116, 50-2-118, 50-2-130, AND 50-16-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1387
392	<i>(House Bill No. 525; Keane)</i> REVISING THE CLASSIFICATION FOR A THIRD-CLASS ENGINEER LICENSE TO OPERATE A STEAM BOILER; ALLOWING A PERSON TO BE LICENSED AS OTHER THAN A FIRST-CLASS OR SECOND-CLASS ENGINEER TO OPERATE A STEAM BOILER BY COMPLETING A COURSE OF INSTRUCTION APPROVED BY THE DEPARTMENT, BY PASSING A WRITTEN EXAMINATION, AND BY HAVING AN ENGINEER INFORM THE DEPARTMENT THAT THE APPLICANT IS COMPETENT TO OPERATE THE TYPE OF BOILER FOR WHICH LICENSURE IS SOUGHT; AND AMENDING SECTIONS 50-74-303 AND 50-74-304, MCA.	1395
393	<i>(House Bill No. 556; Gallik)</i> REVISING THE REGISTRATION PERIOD FOR CERTAIN VEHICLES THAT ARE REGISTERED IN A MANNER THAT ALLOWS THEM TO DISPLAY AMATEUR RADIO OPERATOR LICENSE PLATES; DIRECTING THE DEPARTMENT OF JUSTICE TO ADOPT RULES THAT PROVIDE A SEPARATE REGISTRATION PERIOD FOR MOTOR HOMES THAT DISPLAY AMATEUR RADIO OPERATOR LICENSE PLATES; AMENDING SECTIONS 61-3-313 AND 61-3-526, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1398
394	<i>(House Bill No. 569; Gutsche)</i> PROVIDING FOR THE MONTANA AT-HOME INFANT CARE PROGRAM FOR LOW-INCOME PARENTS IN LIEU OF CHILD CARE ASSISTANCE; PROVIDING ELIGIBILITY REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE.	1399
395	<i>(House Bill No. 610; Bergren)</i> MODIFYING THE PUBLIC HEARING PROCEDURES OF WATER AND SEWER DISTRICTS RELATING TO RATE INCREASES; AMENDING SECTION 7-13-2275, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1400
396	<i>(House Bill No. 647; Thomas)</i> GENERALLY REVISING THE LAWS GOVERNING HEALTH CARE INFORMATION TO CONFORM TO FEDERAL HEALTH CARE PRIVACY LEGISLATION, INCLUDING THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996; IMPOSING A DUTY ON A PERSON AUTHORIZED TO ACT AS A HEALTH CARE REPRESENTATIVE FOR AN INDIVIDUAL WITH RESPECT TO THE INDIVIDUAL'S HEALTH CARE INFORMATION TO ACT IN GOOD FAITH TO REPRESENT THE BEST INTERESTS OF THE INDIVIDUAL; AMENDING SECTIONS 41-1-401, 41-1-402, 41-1-403, 50-5-106, 50-16-201, 50-16-502, 50-16-504, 50-16-535, 50-16-1009, 50-19-402, 50-19-405, 50-19-406, AND 53-24-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1401
397	<i>(House Bill No. 663; Laslovich)</i> ENHANCING ENFORCEMENT OF THE TOBACCO PRODUCTS RESERVE FUND LAW; REQUIRING TOBACCO PRODUCT MANUFACTURERS, AS A CONDITION TO THE ABILITY TO	

SELL THEIR PRODUCTS IN THIS STATE, TO CERTIFY COMPLIANCE WITH SECTION 16-11-403, MCA, TO IDENTIFY THE BRAND FAMILIES OF THEIR PRODUCTS, TO REGISTER TO DO BUSINESS IN THIS STATE, AND TO APPOINT AN AGENT FOR SERVICE OF PROCESS, IF NOT DOMICILED IN THIS STATE; REQUIRING THE ATTORNEY GENERAL TO ESTABLISH AND PUBLISH ON THE ATTORNEY GENERAL'S WEBSITE A DIRECTORY OF TOBACCO PRODUCT MANUFACTURERS AND BRAND FAMILIES THAT ARE IN COMPLIANCE WITH THE TOBACCO PRODUCTS RESERVE FUND LAW; PROHIBITING WHOLESALERS FROM AFFIXING TAX INSIGNIA TO CIGARETTES OR BRAND FAMILIES MANUFACTURED BY TOBACCO PRODUCT MANUFACTURERS NOT INCLUDED IN THE ATTORNEY GENERAL'S DIRECTORY; REQUIRING WHOLESALERS TO REPORT INFORMATION REGARDING SALES OF NONPARTICIPATING MANUFACTURER CIGARETTES AND BRAND FAMILIES IN THIS STATE; ALLOWING THE ATTORNEY GENERAL TO PROVIDE BY RULE FOR THE MAKING OF ESCROW PAYMENTS IN INSTALLMENTS; ALLOWING THE ATTORNEY GENERAL TO RECOVER INVESTIGATION EXPENSES, ATTORNEY FEES, AND COSTS IN ACTIONS TO ENFORCE THE TOBACCO PRODUCTS RESERVE FUND LAW; STATUTORILY APPROPRIATING TO THE DEPARTMENT OF JUSTICE ANY EXPENSES, COSTS, OR ATTORNEY FEES AWARDED; PROVIDING PENALTIES; PROVIDING FOR JUDICIAL REVIEW OF DECISIONS BY THE ATTORNEY GENERAL REGARDING THE DIRECTORY; PROVIDING RULEMAKING AUTHORITY; CLARIFYING THE CALCULATION OF AMOUNTS THAT MAY BE WITHDRAWN FROM QUALIFYING ESCROW ACCOUNTS; AMENDING SECTIONS 16-11-403 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT VOIDNESS PROVISION

1412

398 (*House Bill No. 703; Parker*) REVISING LAWS GOVERNING CHILD ABUSE AND NEGLECT; AMENDING THE DEFINITION OF "PSYCHOLOGICAL ABUSE OR NEGLECT"; PROVIDING PROTECTIONS FOR VICTIMS OF PARTNER AND FAMILY MEMBER ASSAULT REGARDING CHILD REMOVAL AND EMERGENCY PROTECTIVE SERVICES; AMENDING SECTIONS 41-3-102 AND 41-3-301, MCA; AND PROVIDING EFFECTIVE DATES

1422

399 (*Senate Bill No. 65; Roush*) GENERALLY REVISING VETERANS' BENEFIT LAWS; REVISING THE PROPERTY TAX EXEMPTION, VEHICLE REGISTRATION FEE, AND SPECIAL LICENSE PLATES PROVISIONS FOR ELIGIBLE VETERANS AND THEIR SURVIVING SPOUSES; REVISING INCOME THRESHOLDS FOR THE VETERAN PROPERTY TAX EXEMPTION; AMENDING LANGUAGE RELATED TO DISABLED VETERANS ENTITLED TO RECEIVE COMPENSATION FROM THE U.S. DEPARTMENT OF VETERANS AFFAIRS AT THE 100 PERCENT DISABILITY RATE; CLARIFYING AND SIMPLIFYING PROVISIONS ON THE VEHICLE REGISTRATION FEE WAIVERS AND SPECIAL LICENSE PLATE PROVISIONS AVAILABLE TO ELIGIBLE VETERANS AND THEIR SURVIVING SPOUSES; EXTENDING VEHICLE REGISTRATION FEE WAIVERS TO THE SPOUSES OF VETERANS WHO WERE KILLED WHILE ON ACTIVE DUTY OR WHO DIED AS A RESULT OF A SERVICE-CONNECTED DISABILITY; CLARIFYING SPECIAL PARKING PRIVILEGES ASSOCIATED WITH DISABLED VETERANS; AMENDING SECTIONS 15-1-121, 15-1-122, 15-6-211, 49-4-301, 49-4-302, 49-4-304, 61-3-313, 61-3-321, 61-3-332, 61-3-407, 61-3-426, 61-3-455, AND 61-3-560, MCA; REPEALING SECTIONS 61-3-452, 61-3-453, 61-3-454, AND 61-3-457, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE

1426

- 400

(Senate Bill No. 98; Mangan) PROVIDING THAT PERSONAL-CARE FACILITIES ARE COMMUNITY RESIDENTIAL FACILITIES FOR PURPOSES OF INCLUDING THOSE FACILITIES AS RESIDENTIAL USES OF PROPERTY UNDER ZONING REGULATIONS; AMENDING SECTION 76-2-411, MCA; AND PROVIDING AN APPLICABILITY DATE

1454
- 401

(Senate Bill No. 105; Johnson) PROVIDING FOR THE ACCEPTANCE OF NATIONAL ACCREDITATION FOR OUTPATIENT CENTERS FOR SURGICAL SERVICES, BEHAVIORAL TREATMENT PROGRAMS, CHEMICAL DEPENDENCY TREATMENT PROGRAMS, RESIDENTIAL TREATMENT FACILITIES, AND MENTAL HEALTH CENTERS FOR PURPOSES OF HEALTH CARE FACILITY LICENSURE; ELIMINATING HEALTH MAINTENANCE ORGANIZATIONS FROM BEING LICENSED AS HEALTH CARE FACILITIES; AND AMENDING SECTIONS 50-5-101, 50-5-103, AND 53-6-702, MCA

1455
- 402

(Senate Bill No. 110; Toole) REVISING CERTAIN OPTIONAL RETIREMENT PLAN MEMBERSHIP PROVISIONS; ALLOWING STATE AND LOCAL ELECTED OFFICIALS WHO WERE DRAWING A RETIREMENT BENEFIT UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM OR THE TEACHERS' RETIREMENT SYSTEM AT THE TIME OF THEIR ELECTION TO CERTAIN POSITIONS COVERED BY THE RETIREMENT SYSTEM TO DECIDE NOT TO RETURN TO ACTIVE MEMBERSHIP IN THE SYSTEM AND TO CONTINUE TO RECEIVE THEIR RETIREMENT BENEFITS; AMENDING SECTIONS 19-3-412, 19-3-1106, 19-20-302, AND 19-20-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

1461
- 403

(Senate Bill No. 113; Esp) REVISING LAWS REGARDING HOSPITALS AND RELATED FACILITIES; DEFINING "INTERMEDIATE CARE FACILITY FOR THE DEVELOPMENTALLY DISABLED"; PROVIDING FOR THE LICENSURE OF INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES FOR LICENSURE OF INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED; ELIMINATING A HEALTH MAINTENANCE ORGANIZATION FROM THE DEFINITION OF "HEALTH CARE FACILITY"; AMENDING SECTIONS 50-5-101, 53-6-165, 53-6-171, AND 53-6-702, MCA; AND PROVIDING AN EFFECTIVE DATE

1467
- 404

(Senate Bill No. 137; DePratu) GENERALLY REVISING THE METHOD OF LEASING STATE TRUST LAND; AUTHORIZING THE LEASING OF STATE TRUST LAND FOR COMMERCIAL PURPOSES; ESTABLISHING PROCEDURES FOR COMMERCIAL LEASES; AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES; REVISING CONSIDERATION FOR EASEMENTS; AMENDING SECTIONS 77-1-204, 77-2-106, 77-6-109, AND 77-6-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

1474
- 405

(Senate Bill No. 146; Anderson) ELIMINATING UNUSED STATE GRANT AND LOAN PROGRAMS; ELIMINATING THE ENERGY CONSERVATION IN AGRICULTURE GRANT PROGRAM, THE ALTERNATIVE ENERGY AND ENERGY CONSERVATION RESEARCH DEVELOPMENT AND DEMONSTRATION PROGRAM, THE SOLID WASTE MANAGEMENT GRANT AND LOAN PROGRAM, AND THE STATE-OWNED BUILDING ENERGY RETROFITTING GRANT AND LOAN PROGRAM; AMENDING SECTIONS 15-6-225, 15-24-1401, 15-31-124, 15-32-402, 17-6-403, 30-16-103, 75-10-103, 75-10-104, 75-10-105, 75-10-106, 80-12-201, 90-5-101, AND 90-8-104, MCA; AND REPEALING SECTIONS 75-10-121, 75-10-122, 75-10-123, 75-10-124,

75-10-125, 90-2-140, 90-2-141, 90-4-101, 90-4-102, 90-4-103, 90-4-104,
90-4-105, 90-4-106, 90-4-109, 90-4-111, AND 90-4-112, MCA 1479

406 *(Senate Bill No. 191; O'Neil)* PROVIDING FOR THE DESTRUCTION OF
UNSUBSTANTIATED REPORTS OF CHILD ABUSE OR NEGLECT;
DEFINING "UNSUBSTANTIATED"; AND AMENDING SECTIONS
41-3-102 AND 41-3-202, MCA 1489

407 *(Senate Bill No. 217; Mahlum)* REQUIRING THE USE OF CHILD SAFETY
RESTRAINTS IN MOTOR VEHICLES FOR CHILDREN UNDER 6
YEARS OF AGE WHO WEIGH LESS THAN 60 POUNDS; ASSIGNING
THE RESPONSIBILITY FOR USE OF CHILD SAFETY RESTRAINTS TO
THE DRIVER; REMOVING THE PROVISION REQUIRING NO MORE
THAN THREE CHILD SAFETY RESTRAINT SYSTEMS IN A VEHICLE;
AND AMENDING SECTIONS 61-9-420 AND 61-13-103, MCA 1494

408 *(Senate Bill No. 226; DePratu)* PROVIDING THAT AN ARREST FOR
DRUG OR GANG-RELATED ACTIVITY CONSTITUTES
NONCOMPLIANCE WITH A TENANT'S DUTY TO MAINTAIN A
DWELLING UNIT AND A LANDLORD'S DUTY TO MAINTAIN
PREMISES; REVISING THE TIME PERIOD FOR NOTIFICATION OF
INTENDED TERMINATION BASED ON THE NONCOMPLIANCE;
REVISING HEARING TIME REQUIREMENTS FOR REPOSSESSION
ACTIONS BASED ON THE NONCOMPLIANCE; AND AMENDING
SECTIONS 70-24-303, 70-24-321, 70-24-422, AND 70-24-427, MCA 1495

409 *(Senate Bill No. 254; Cooney)* REGULATING RENTAL VEHICLE
ENTITIES AND CUSTOMER SERVICE REPRESENTATIVES WITH
REGARD TO THE SALE OF RENTAL VEHICLE INSURANCE;
REQUIRING TRAINING OF CUSTOMER SERVICE
REPRESENTATIVES; PROVIDING DEFINITIONS; AND PROVIDING
AN APPLICABILITY DATE. 1499

410 *(Senate Bill No. 306; Ryan)* CREATING THE UNIFORM ATHLETE
AGENTS ACT; PROVIDING FOR DEFINITIONS, SERVICE OF
PROCESS, REGISTRATION OF ATHLETE AGENTS, AND CIVIL AND
CRIMINAL PENALTIES; REQUIRING PAYMENT OF A \$200 BIENNIAL
REGISTRATION OR RENEWAL FEE; ESTABLISHING CONTRACT
CRITERIA FOR ATHLETE AGENTS AND STUDENT-ATHLETES;
PROVIDING FOR NOTICE TO THE STUDENT-ATHLETE'S
EDUCATIONAL INSTITUTION OF A CONTRACT BETWEEN A
STUDENT-ATHLETE AND AN ATHLETE AGENT; GIVING
STUDENT-ATHLETES THE RIGHT TO CANCEL THE CONTRACT
WITH AN ATHLETE AGENT; PROVIDING RULEMAKING AUTHORITY
TO THE DEPARTMENT OF LABOR AND INDUSTRY; AND AMENDING
SECTION 37-1-401, MCA 1502

411 *(Senate Bill No. 307; Ryan)* REVISING SCHOOL DISTRICT
INVESTMENT LAWS; ELIMINATING THE REQUIREMENT FOR A
SCHOOL DISTRICT TO ESTABLISH A SEPARATE INVESTMENT
ACCOUNT FOR EACH FUND; REQUIRING THAT ONLY DEBT
SERVICE FUNDS MUST BE COLLECTED BY A COUNTY TREASURER
AND REPORTED TO A SCHOOL DISTRICT; AND AMENDING
SECTION 20-9-235, MCA 1510

412 *(Senate Bill No. 389; McGee)* PROVIDING AN ALTERNATIVE DISPUTE
RESOLUTION PROCEDURE FOR RESIDENTIAL CONSTRUCTION
DISPUTES; REQUIRING A CLAIMANT WITH AN ALLEGED
CONSTRUCTION DEFECT TO FILE A NOTICE OF CLAIM WITH THE
CONSTRUCTION PROFESSIONAL THAT THE CLAIMANT ASSERTS
IS RESPONSIBLE FOR THE DEFECT AND PROVIDING THE
CONSTRUCTION PROFESSIONAL WITH THE OPPORTUNITY TO

RESOLVE THE CLAIM WITHOUT LITIGATION; LIMITING DAMAGES THAT CAN BE RECOVERED IN RESIDENTIAL CONSTRUCTION DISPUTES; AND AMENDING SECTION 27-2-208, MCA. 1511

413 (Senate Bill No. 449; Cooney) REVISING THE FETAL, INFANT, AND CHILD MORTALITY PREVENTION ACT; ALLOWING COUNTIES AND TRIBAL GOVERNMENTS TO COOPERATE TO ALLOW TEAMS TO REVIEW ALL FETAL, INFANT, AND CHILD DEATHS; REVISING CONFIDENTIALITY AND DISCLOSURE PROVISIONS RELATED TO FETAL, INFANT, AND CHILD MORTALITY REVIEW TEAMS; AND AMENDING SECTIONS 50-19-402, 50-19-403, 50-19-404, 50-19-405, AND 50-19-406, MCA 1516

414 (House Bill No. 155; Jent) GENERALLY UPDATING AND REVISING PROVISIONS ON VOTING SYSTEM TECHNOLOGIES, BALLOT FORMATS, AND VOTE COUNTING; SPECIFYING UNIFORM STANDARDS FOR THE SECRETARY OF STATE'S APPROVAL OF A VOTING SYSTEM FOR USE IN THE STATE; REQUIRING THE SECRETARY OF STATE TO ADOPT UNIFORM STATEWIDE RULES; REQUIRING ELECTION ADMINISTRATORS TO COLLECT AND REPORT CERTAIN DATA; PROVIDING UNIFORM PROCEDURES ON HOW VOTES ARE COUNTED; CLARIFYING TRAINING REQUIREMENTS FOR ELECTION ADMINISTRATORS AND ELECTION JUDGES; CLARIFYING THE APPLICATION OF CERTAIN ELECTION LAWS TO SCHOOL ELECTION AND SCHOOL ELECTION ADMINISTRATORS; AMENDING SECTIONS 13-1-101, 13-1-103, 13-1-202, 13-1-203, 13-3-105, 13-4-101, 13-4-102, 13-4-203, 13-10-204, 13-10-208, 13-10-209, 13-10-211, 13-10-301, 13-10-302, 13-10-303, 13-10-311, 13-12-201, 13-12-202, 13-12-203, 13-12-204, 13-12-205, 13-12-212, 13-13-111, 13-13-112, 13-13-115, 13-13-116, 13-13-117, 13-13-201, 13-13-203, 13-13-205, 13-13-211, 13-13-212, 13-13-214, 13-13-222, 13-13-229, 13-13-231, 13-13-232, 13-13-233, 13-13-234, 13-13-241, 13-13-244, 13-14-115, 13-14-116, 13-14-117, 13-14-118, 13-14-212, 13-15-101, 13-15-103, 13-15-104, 13-15-105, 13-15-201, 13-16-201, 13-16-303, 13-16-411, 13-16-412, 13-16-414, 13-16-417, 13-16-420, 13-17-101, 13-17-102, 13-17-103, 13-17-104, 13-17-105, 13-17-106, 13-17-107, 13-17-201, 13-17-203, 13-17-204, 13-17-206, 13-17-305, 13-17-306, 13-19-106, 13-19-309, 13-19-312, 13-19-314, 13-25-101, 13-27-501, 13-27-502, 13-35-202, 13-35-205, 13-35-206, 13-37-126, 13-37-250, 13-38-201, 20-20-421, AND 76-15-303, MCA; AND REPEALING SECTIONS 13-12-208, 13-12-209, 13-13-221, 13-15-202, 13-16-413, AND 13-17-301, MCA 1519

415 (House Bill No. 253; Hedges) INCLUDING INTERNET WEBSITES AS A FORM OF COMMUNICATION COVERED BY ELECTION LAW DISCLOSURE REQUIREMENTS; CLARIFYING THAT A CANDIDATE OR A CANDIDATE'S CAMPAIGN IS ALSO SUBJECT TO DISCLOSURE REQUIREMENTS; AND AMENDING SECTION 13-35-225, MCA 1562

416 (House Bill No. 256; Shockley) CLARIFYING THE JURISDICTION OF CAMPUS SECURITY OFFICERS; ALLOWING AGREEMENTS WITH LOCAL LAW ENFORCEMENT AGENCIES TO EXPAND JURISDICTION; AND AMENDING SECTION 20-25-321, MCA 1563

417 (House Bill No. 266; Jacobson) REVISING THE MONTANA TELECOMMUNICATIONS ACCESS PROGRAM; REMOVING THE REQUIREMENT FOR ASSISTING FACILITIES IN OBTAINING INFANT HEARING SCREENING EQUIPMENT; REVISING THE MEANS TEST FOR ELIGIBILITY; DELETING THE REQUIREMENT THAT A FEE BE PAID PRIOR TO DELIVERY OF SPECIAL EQUIPMENT; REQUIRING THE SPECIAL ASSESSMENT ON ALL

TITLE CONTENTS

TELEPHONE ACCESS LINES; AMENDING SECTIONS 53-19-302, 53-19-306, 53-19-307, 53-19-310, AND 53-19-311, MCA; AND PROVIDING AN EFFECTIVE DATE 1564

418 *(House Bill No. 270; Bergren)* PROHIBITING THE USE OR SALE OF REFRIGERANTS IN MOTOR VEHICLE AND SPECIAL MOBILE EQUIPMENT AIR CONDITIONING SYSTEMS THAT ARE NOT INCLUDED IN THE LIST OF SAFE ALTERNATIVE AIR CONDITIONING SUBSTITUTES PUBLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1567

419 *(House Bill No. 468; Gillan)* REVISING WHAT INFORMATION MUST BE INCLUDED WITH ELECTION MATERIALS; REQUIRING PRINTED ELECTION MATERIALS THAT HAVE INFORMATION ABOUT VOTING RECORDS TO INCLUDE SPECIFIC INFORMATION AND A SIGNED STATEMENT ATTESTING TO THE ACCURACY OF THE INFORMATION; AND AMENDING SECTION 13-35-225, MCA 1568

420 *(House Bill No. 521; Balyeat)* REVISING THE LAWS RELATING TO BAIL BONDS; PROVIDING THAT IF A SURETY RETURNS A DEFENDANT WITHIN 90 DAYS OF FORFEITURE OF A BOND THE FORFEITURE MUST BE DISCHARGED WITHOUT PENALTY; ALLOWING A SURETY TO SURRENDER A DEFENDANT TO A DETENTION CENTER FACILITY; AMENDING SECTIONS 46-9-503 AND 46-9-510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1569

421 *(House Bill No. 573; Parker)* ALLOWING A PARENT OR GUARDIAN OF A DIABETIC STUDENT TO DESIGNATE A SCHOOL DISTRICT EMPLOYEE TO ADMINISTER GLUCAGON TO THE STUDENT IN AN EMERGENCY SITUATION; AND LIMITING THE LIABILITY OF THE SCHOOL EMPLOYEE AND A SCHOOL DISTRICT. 1570

422 *(House Bill No. 631; Lake)* PROVIDING THAT A SECURITY INTEREST IN A LIQUOR LICENSE IS CONSIDERED IN DEFAULT IF THERE HAS BEEN A NONJUDICIAL SALE BY THE SECURED PARTY MADE PURSUANT TO THE UNIFORM COMMERCIAL CODE; AMENDING SECTION 16-4-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1571

423 *(House Bill No. 641; Haines)* PROVIDING FOR NONDISCRIMINATORY PAYMENT OF INTERCARRIER COMPENSATION; DEFINING CERTAIN TERMS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 69-3-803, MCA; AND PROVIDING AN EFFECTIVE DATE 1573

424 *(House Bill No. 9; Kasten)* ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING GENERAL FUND AND OTHER MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE 1576

425 *(House Bill No. 94; Lawson)* REVISING AND CLARIFYING THE PUBLIC PARTICIPATION AND NOTICE REQUIREMENTS FOR OPEN MEETINGS; PROVIDING THAT AN AGENDA FOR AN OPEN MEETING MUST INCLUDE AN ITEM ALLOWING PUBLIC COMMENT ON ANY PUBLIC MATTER WITHIN THE JURISDICTION OF THE AGENCY CONDUCTING THE MEETING; CLARIFYING THAT AN AGENCY MAY NOT TAKE ACTION ON ANY MATTER DISCUSSED UNLESS SPECIFIC NOTICE OF THAT MATTER IS INCLUDED ON AN AGENDA AND PUBLIC COMMENT HAS BEEN ALLOWED; CLARIFYING WHAT CONSTITUTES A PUBLIC MATTER; CLARIFYING THAT THE GOVERNOR'S DUTY TO ENSURE THAT AGENCIES HAVE POLICIES

AND PROCEDURES TO FACILITATE PUBLIC PARTICIPATION APPLIES TO THE EXECUTIVE BRANCH OF STATE GOVERNMENT; AMENDING SECTION 2-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1579

426 (House Bill No. 152; Fisher) REVISING INTERGOVERNMENTAL COOPERATION OF DISASTER AND EMERGENCY SERVICES LAWS; CLARIFYING ACCEPTANCE OF FUNDS RECEIVED FOR FEDERAL REIMBURSEMENT OF MUTUAL AID; REVISING THE STATUTORY APPROPRIATION OF FUNDS RECEIVED FROM THE FEDERAL GOVERNMENT FOR EMERGENCY OR DISASTER SERVICES TO INCLUDE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FIRE SUPPRESSION; INCREASING THE STATUTORY APPROPRIATION UNDER THE EMERGENCY POWERS OF THE GOVERNOR FROM \$12 MILLION TO \$16 MILLION; AMENDING SECTIONS 10-3-203 AND 10-3-312, MCA; AND PROVIDING AN EFFECTIVE DATE 1580

427 (House Bill No. 169; Keane) REVISING THE LAWS OF LICENSING FOR INSURANCE PRODUCERS, ADJUSTERS, AND CONSULTANTS; PROVIDING FOR INACTIVE STATUS FOR INSURANCE PRODUCERS SERVING IN THE ARMED FORCES; REQUIRING AN INSURANCE PRODUCER LICENSING BACKGROUND EXAMINATION AND PROVIDING EXAMINATION CRITERIA; DEFINING "CAR RENTAL INSURANCE"; REVISING THE PAYMENT OF FEES FOR LICENSES AND RENEWAL OF LICENSES RELATING TO INSURANCE; REVISING THE STATUS OF NONRESIDENT INSURANCE PRODUCERS; PROVIDING FOR BIENNIAL RENEWAL OF LICENSES AND PAYMENT OF BIENNIAL LICENSE FEES FOR CERTAIN PRODUCERS; SIMPLIFYING THE INSURANCE CONTINUING EDUCATION REQUIREMENTS; AMENDING SECTIONS 33-2-305, 33-2-708, 33-7-525, 33-7-532, 33-17-102, 33-17-103, 33-17-201, 33-17-211, 33-17-212, 33-17-214, 33-17-301, 33-17-502, 33-17-503, 33-17-504, 33-17-1001, 33-17-1002, 33-17-1203, 33-17-1205, AND 33-17-1207, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES 1581

428 (House Bill No. 185; Wilson) GENERALLY REVISING LAWS GOVERNING COMMERCIAL DRIVER LICENSING TO CONFORM WITH REQUIREMENTS OF THE FEDERAL MOTOR CARRIER SAFETY IMPROVEMENT ACT OF 1999 (MCSIA) AND THE FEDERAL REGULATIONS IMPLEMENTING MCSIA; DEFINING "NONCOMMERCIAL MOTOR VEHICLE"; REVISING THE DEFINITIONS OF "COMMERCIAL MOTOR VEHICLE" AND "COMMERCIAL DRIVER'S LICENSE"; CLARIFYING THE REQUIREMENTS FOR OPERATION OF A COMMERCIAL MOTOR VEHICLE; REVISING THE REQUIREMENTS GOVERNING THE APPLICATION FOR AND RENEWAL OF A COMMERCIAL DRIVER'S LICENSE; REVISING REQUIREMENTS FOR REQUESTING DRIVING RECORDS FROM A PRIOR STATE OF LICENSURE; REVISING LICENSE SUSPENSION PERIODS AND COMPUTATION REQUIREMENTS FOR NONCOMMERCIAL AND COMMERCIAL MOTOR VEHICLE IMPLIED CONSENT LAWS; REVISING REQUIREMENTS FOR SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE FOR MAJOR OFFENSES OR FOR CONDUCT OCCURRING WHILE OPERATING A NONCOMMERCIAL MOTOR VEHICLE; CLARIFYING THE REQUIREMENTS FOR SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE FOR A PERSON WHO OPERATES A COMMERCIAL MOTOR VEHICLE WITHOUT A COMMERCIAL DRIVER'S LICENSE OR PROPER ENDORSEMENT OR WHILE THE PERSON'S COMMERCIAL DRIVER'S LICENSE IS SUSPENDED;

INCLUDING NONCOMMERCIAL MOTOR VEHICLE OFFENSES IN THE LIST OF FELONY-DRUG OFFENSES FOR WHICH SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE IS REQUIRED; AMENDING SECTIONS 61-1-134, 61-1-135, 61-5-102, 61-5-107, 61-5-110, 61-5-111, 61-5-112, 61-5-118, 61-5-212, 61-8-402, 61-8-802, 61-8-803, 61-8-804, 61-8-805, 61-8-806, AND 61-11-102, MCA; REPEALING SECTION 61-5-117, MCA; AND PROVIDING APPLICABILITY DATES 1601

429 *(House Bill No. 213; Gallik)* GENERALLY REVISING RETIREMENT LAWS; GENERALLY REVISING THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDEN AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; GENERALLY REVISING THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; CLARIFYING TERMINOLOGY RELATED TO SERVICE CREDIT; CLARIFYING PROVISIONS REGARDING THE PURCHASE OF SERVICE CREDIT; REVISING THE PURCHASE OF SERVICE CREDIT FOR RESERVE MILITARY SERVICE; CLARIFYING DEFINITIONS WITH RESPECT TO COMPENSATION, HIGHEST AVERAGE COMPENSATION, AND FINAL AVERAGE COMPENSATION; REVISING DISABILITY PROVISIONS; CLARIFYING SURVIVORSHIP PAYMENT PROVISIONS; REVISING PROVISIONS RELATED TO COURT SETTLEMENTS CONCERNING PAYMENT OF RETIREMENT BENEFITS; REVISING DEFINITIONS IN THE DEFERRED RETIREMENT OPTION PLAN WITHIN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 7-33-2313, 19-2-303, 19-2-403, 19-2-506, 19-2-603, 19-2-702, 19-2-704, 19-2-706, 19-2-708, 19-2-709, 19-2-801, 19-2-802, 19-2-907, 19-2-908, 19-2-909, 19-2-1010, 19-3-108, 19-3-401, 19-3-403, 19-3-412, 19-3-503, 19-3-504, 19-3-505, 19-3-510, 19-3-511, 19-3-512, 19-3-513, 19-3-514, 19-3-521, 19-3-904, 19-3-906, 19-3-908, 19-3-1002, 19-3-1008, 19-3-1015, 19-3-1106, 19-3-1201, 19-3-1202, 19-3-1205, 19-3-1210, 19-3-1501, 19-3-2103, 19-3-2111, 19-3-2112, 19-3-2113, 19-3-2114, 19-3-2115, 19-3-2116, 19-3-2117, 19-3-2126, 19-3-2133, 19-3-2141, 19-5-101, 19-5-301, 19-5-409, 19-5-501, 19-5-502, 19-5-701, 19-6-101, 19-6-401, 19-6-502, 19-6-503, 19-6-601, 19-6-709, 19-6-801, 19-6-803, 19-6-804, 19-6-805, 19-7-101, 19-7-301, 19-7-312, 19-7-502, 19-7-601, 19-7-801, 19-7-803, 19-7-804, 19-7-805, 19-7-1001, 19-8-101, 19-8-301, 19-8-302, 19-8-308, 19-8-604, 19-8-701, 19-8-801, 19-8-901, 19-8-904, 19-8-905, 19-8-906, 19-9-104, 19-9-301, 19-9-403, 19-9-405, 19-9-406, 19-9-410, 19-9-411, 19-9-903, 19-9-1202, 19-9-1204, 19-9-1205, 19-9-1206, 19-9-1207, 19-9-1208, 19-13-104, 19-13-301, 19-13-403, 19-13-405, 19-13-406, 19-13-701, 19-13-704, 19-13-803, 19-13-1007, 19-17-108, 19-17-402, 19-17-403, 19-17-405, 19-50-102, AND 25-13-608, MCA; REPEALING SECTIONS 19-3-509, 19-3-1604, 19-6-802, 19-7-802, 19-8-902, 19-9-405, AND 19-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE 1617

430 *(House Bill No. 292; Younkin)* CLARIFYING THAT THE LAW GOVERNING COUNTY ACQUISITION OF REAL PROPERTY APPLIES TO THE ACQUISITION OF CONSERVATION EASEMENTS; PROVIDING FOR AN INDEPENDENT APPRAISAL OF CERTAIN CONSERVATION EASEMENTS BY A CERTIFIED GENERAL REAL ESTATE APPRAISER PRIOR TO A COUNTY PURCHASE OF THOSE CONSERVATION EASEMENTS; CLARIFYING THAT LAWS GOVERNING OPEN SPACE AND CONSERVATION EASEMENTS DO NOT SUPERSEDE THE PROCEDURE FOR COUNTY ACQUISITION OF REAL PROPERTY AND CONSERVATION EASEMENTS; AMENDING SECTIONS 7-8-2202 AND 76-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1693

431	(House Bill No. 299; Peterson) LIMITING THE LIABILITY OF OWNERS OF STOCK FOR TRESPASS TO INSTANCES OF NEGLIGENCE; CLARIFYING THAT HERD DISTRICT LAW APPLIES TO TRESPASSING ANIMALS IN HERD DISTRICTS; AMENDING SECTION 81-4-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.	1695
432	(House Bill No. 338; Keane) INCREASING THE LENGTH OF TIME FOR WHICH AN INDIVIDUAL IS ELIGIBLE FOR UNEMPLOYMENT INSURANCE BENEFITS TO 28 WEEKS; REVISING THE RATIOS USED TO CALCULATE UNEMPLOYMENT INSURANCE CONTRIBUTION RATES; INCREASING THE MAXIMUM WEEKLY BENEFIT AMOUNT TO 66.5 PERCENT OF THE AVERAGE WEEKLY WAGE; AMENDING SECTIONS 39-51-1218, 39-51-2201, AND 39-51-2204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.	1695
433	(House Bill No. 396; Gibson) REQUIRING ANY PERSON WHO IS BORN AFTER JANUARY 1, 1985, TO PROVIDE A CERTIFICATE OF COMPLETION FROM A HUNTER SAFETY AND EDUCATION COURSE BEFORE THE PERSON MAY BE ISSUED A MONTANA HUNTING LICENSE; CLARIFYING THAT THE PERSON ISSUING THE LICENSE IS REQUIRED TO DETERMINE PROOF OF COMPLETION OF THE COURSE; CLARIFYING THAT THE MONTANA HUNTER SAFETY AND EDUCATION COURSE IS NOT LIMITED TO YOUTHS; AND AMENDING SECTION 87-2-105, MCA.	1698
434	(House Bill No. 408; Peterson) REQUIRING THE PAYMENT OF LOCAL REGISTRAR FEES TO A COUNTY DEPARTMENT IF THE LOCAL REGISTRAR IS A COUNTY EMPLOYEE; AMENDING SECTION 50-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1700
435	(House Bill No. 410; Younkin) PROVIDING THAT AN EMPLOYEE WHO IS INJURED OR DIES WHILE TRAVELING IN THE COURSE OF EMPLOYMENT IS ENTITLED TO COMPENSATION IF THE EMPLOYER FURNISHES THE EMPLOYEE'S TRANSPORTATION; PROVIDING THAT A PAYMENT MADE TO AN EMPLOYEE UNDER A COLLECTIVE BARGAINING AGREEMENT, PERSONNEL POLICY MANUAL, EMPLOYEE HANDBOOK, OR ANY OTHER DOCUMENT PROVIDED TO THE EMPLOYEE AS AN INCENTIVE TO WORK AT A JOBSITE IS NOT A REIMBURSEMENT FOR COSTS OF TRAVEL, GAS, OIL, OR LODGING; AMENDING SECTION 39-71-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.	1700
436	(House Bill No. 441; Cyr) PROVIDING FOR THE PRORATION OF PROPERTY TAXES ON CENTRALLY ASSESSED PROPERTY WHEN LAND IS SUBDIVIDED; AND AMENDING SECTIONS 15-16-102 AND 76-3-207, MCA	1702
437	(House Bill No. 478; Peterson) ALLOWING A CRIMINAL SENTENCE TO INCLUDE A PROVISION FOR THE SUSPENSION OF THE LICENSE OR DRIVING PRIVILEGE OF THE CONVICTED PERSON UPON THE FAILURE TO COMPLY WITH ANY PENALTY, RESTRICTION, OR CONDITION OF THE SENTENCE; PROVIDING A PROCEDURE FOR THE SUSPENSION OF THE LICENSE OR DRIVING PRIVILEGE; AMENDING SECTIONS 46-18-201 AND 61-5-214, MCA; AND PROVIDING AN APPLICABILITY DATE	1704
438	(House Bill No. 484; Brown) PROVIDING THAT ASSESSMENT AND COUNSELING FOR A PERSON CONVICTED OF PARTNER OR FAMILY	

	MEMBER ASSAULT MUST INCLUDE A FOCUS ON CONTROLLING BEHAVIOR; AND AMENDING SECTION 45-5-206, MCA	1707
439	<i>(House Bill No. 512; Sinrud)</i> PROVIDING FOR THE ADDITION OF TERRITORY ADJACENT TO AN EXISTING PLANNING AND ZONING DISTRICT	1709
440	<i>(House Bill No. 537; Lawson)</i> REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO COMMISSION A NEW STUDY TO RECALCULATE THE ANNUAL SUSTAINABLE YIELD ON FORESTED STATE LANDS; SETTING THE ANNUAL TIMBER SALE TARGET AT 50 MILLION BOARD FEET UNTIL THE NEW STUDY IS COMPLETED; AMENDING SECTION 77-5-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1709
441	<i>(House Bill No. 540; Gallik)</i> REVISING THE LAWS RELATING TO THE SELECTION OF TRIAL JURIES; PROVIDING THAT TRIAL JURORS MUST BE SELECTED FROM A COMBINED LIST OF QUALIFIED ELECTORS AND LICENSED DRIVERS AND HOLDERS OF MONTANA IDENTIFICATION CARDS; ENSURING THAT NO PERSON'S NAME APPEARS ON THE COMBINED LIST MORE THAN ONCE; ELIMINATING THE REQUIREMENT THAT JURORS MUST BE REGISTERED ELECTORS; AMENDING SECTIONS 2-6-109, 3-15-301, 3-15-402, 3-15-403, 3-15-404, AND 46-17-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE	1710
442	<i>(House Bill No. 618; Dickenson)</i> INCREASING TO \$200 THE FEE FOR REINSTATEMENT OF A DRIVER'S LICENSE THAT HAS BEEN REVOKED AS A RESULT OF CERTAIN OFFENSES, INCLUDING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING THAT HALF OF THE FEES COLLECTED BE DEPOSITED INTO THE GENERAL FUND AND THE OTHER HALF INTO AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AND AMENDING SECTION 61-2-107, MCA.	1713
443	<i>(House Bill No. 640; Haines)</i> REVISING LOCAL GOVERNMENT BUILDING CODE AUTHORITY; ELIMINATING THE ABILITY OF A COUNTY TO DESIGNATE A PORTION OF A COUNTY OUTSIDE OF A CITY OR TOWN AS THE COUNTY JURISDICTIONAL AREA; ELIMINATING ELECTION REQUIREMENTS RELATED TO BUILDING CODES; REVISING DEFINITIONS AND THE USE OF DEFINED TERMS; PROVIDING A TRANSITION PERIOD CONCERNING JURISDICTION; AMENDING SECTIONS 13-19-106, 50-3-103, 50-60-101, 50-60-102, 50-60-106, 50-60-107, 50-60-109, 50-60-110, 50-60-115, 50-60-118, 50-60-205, 50-60-211, 50-60-212, 50-60-213, 50-60-301, 50-60-302, 50-60-303, 50-60-404, 50-60-506, 50-60-510, 50-60-604, 50-60-605, AND 50-60-607, MCA; REPEALING SECTIONS 50-60-310, 50-60-311, 50-60-312, 50-60-313, AND 50-60-314, MCA; AND PROVIDING EFFECTIVE DATES.	1714
444	<i>(House Bill No. 648; Younkin)</i> PROVIDING THAT A REPRODUCTIVE TECHNOLOGY BUSINESS HAS A LIEN ON ANIMAL EMBRYOS OR SEMEN UNTIL THE AMOUNT DUE FOR SERVICES IS PAID; DEFINING "REPRODUCTIVE TECHNOLOGY BUSINESS"; PROVIDING THAT A LIEN CREATED UNDER THE AGISTERS' LIEN LAWS BY A REPRODUCTIVE TECHNOLOGY BUSINESS MAY NOT TAKE PRECEDENCE OVER OTHER LIENS UNLESS THE REPRODUCTIVE TECHNOLOGY BUSINESS PROVIDES NOTICE TO OTHER LIENHOLDERS OR SECURED PARTIES WITHIN 30 DAYS FROM THE TIME OF HARVESTING OR COLLECTING THE EMBRYOS OR SEMEN; AMENDING SECTIONS 71-3-1201 AND 71-3-1202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1729

- 445 *(House Bill No. 653; Lambert)* AUTHORIZING THE GRAIN DEPOSITOR TO STATE A PREFERENCE OF GRADING FACILITY THROUGH A WRITTEN AGREEMENT; PROVIDING THAT THE OPTIONS PROVIDED FOR GRADING FACILITIES IN THE WRITTEN AGREEMENT MUST INCLUDE BUT MAY NOT BE LIMITED TO THE STATE GRAIN LAB; PROVIDING THAT THE WRITTEN AGREEMENT MUST SPECIFY THE TIME PERIOD TO WHICH THE AGREEMENT APPLIES; PROVIDING THAT ALL FEES AND OTHER CHARGES ASSOCIATED WITH THE GRAIN SAMPLE ANALYSIS MUST REFLECT AS NEARLY AS POSSIBLE THE ACTUAL COST OF THE SERVICES; REQUIRING A WAREHOUSE OPERATOR OR COMMODITY DEALER TO POST FEES, INCLUDING ANTICIPATED SHIPPING AND HANDLING FEES; AMENDING SECTIONS 80-4-711 AND 80-4-721, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1730
- 446 *(House Bill No. 667; Harris)* INCLUDING PONZI SCHEMES IN THE LAW CRIMINALIZING THE CONDUCT OR PROMOTION OF PYRAMID PROMOTIONAL SCHEMES; INCREASING THE PENALTIES FOR OPERATING A PYRAMID PROMOTIONAL SCHEME; AND AMENDING SECTIONS 30-10-324 AND 30-10-325, MCA. 1732
- 447 *(House Bill No. 676; Lindeen)* CLARIFYING THE DEFINITION OF "PROJECT" UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; AMENDING SECTION 75-7-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1734
- 448 *(House Bill No. 681; Clark)* PROVIDING FOR THE LICENSURE OF MEDICATION AIDES; DEFINING "MEDICATION AIDE"; PROVIDING THE BOARD OF NURSING AUTHORITY TO ESTABLISH QUALIFICATIONS; PROVIDING THAT MEDICATION AIDES MAY PRACTICE ONLY IN PERSONAL-CARE FACILITIES AND UNDER THE GENERAL SUPERVISION OF A LICENSED NURSE; AND AMENDING SECTIONS 37-8-101, 37-8-102, AND 37-8-202, MCA 1735
- 449 *(House Bill No. 698; Gillan)* CREATING A TRAUMATIC BRAIN INJURY ADVISORY COUNCIL; CREATING A TRAUMATIC BRAIN INJURY ACCOUNT FOR PUBLIC INFORMATION AND EDUCATION ON TRAUMATIC BRAIN INJURY; ALLOWING FOR A VOLUNTARY DONATION ON MOTOR VEHICLE REGISTRATION FOR THE TRAUMATIC BRAIN INJURY FUND; AMENDING SECTION 61-3-303, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. 1739
- 450 *(House Bill No. 733; Schrupf)* INCREASING FROM 2 YEARS TO 4 YEARS THE MINIMUM IMPRISONMENT TERM FOR SEXUAL ASSAULT IF THE VICTIM IS LESS THAN 16 YEARS OF AGE AND THE OFFENDER IS 3 OR MORE YEARS OLDER THAN THE VICTIM OR IF THE OFFENDER INFLECTS BODILY INJURY UPON ANYONE IN THE COURSE OF COMMITTING THE SEXUAL ASSAULT; ALLOWING A JUDGE TO IMPOSE A TERM OF LESS THAN 4 YEARS UPON A WRITTEN FINDING THAT THERE IS GOOD CAUSE TO DO SO; AND AMENDING SECTION 45-5-502, MCA. 1741
- 451 *(House Bill No. 761; Haines)* PROVIDING AUTHORITY TO EXERCISE EMINENT DOMAIN FOR THE PURPOSE OF ESTABLISHING A VETERANS' CEMETERY; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF PROPERTY FOR A VETERANS' CEMETERY IF THE LOCATION MEETS FEDERAL REQUIREMENTS FOR FEDERAL FUNDING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 10-2-601 AND 70-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1742

452	<i>(Senate Bill No. 35; Grimes)</i> PROVIDING THAT IF A PERSON WITH A DEVELOPMENTAL DISABILITY IS FOUND FIT TO PROCEED AND IS CONVICTED OF A CRIME, THE COURT MAY SENTENCE THE PERSON TO AN APPROPRIATE DEVELOPMENTAL DISABILITIES FACILITY; ALLOWING EVIDENCE OF DEVELOPMENTAL DISABILITY TO PROVE STATE OF MIND; PROVIDING THAT DEVELOPMENTAL DISABILITY MAY EXCLUDE FITNESS TO PROCEED; AND AMENDING SECTIONS 46-14-102, 46-14-103, 46-14-206, 46-14-221, 46-14-311, AND 46-14-312, MCA	1745
453	<i>(Senate Bill No. 111; Nelson)</i> AMENDING THE DEFINITION OF "ELIGIBLE PERSON" AS IT RELATES TO THE COMPREHENSIVE HEALTH ASSOCIATION AND PLAN; AUTHORIZING THE INSURANCE COMMISSIONER TO LIMIT CERTAIN ELIGIBILITY CRITERIA BY ADOPTING RULES ON WHICH TO BASE THE ELIGIBILITY ON INCOME LEVEL; DEFINING ELIGIBILITY IN TERMS OF FEDERAL TRADE ADJUSTMENT ASSISTANCE; AMENDING SECTIONS 33-22-1501, 33-22-1502, 33-22-1513, 33-22-1516, AND 33-22-1524, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1749
454	<i>(Senate Bill No. 209; Tester)</i> REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PUBLISH AN ANNUAL COUNT OF GAME ANIMALS, INCLUDING THE BASIS UPON WHICH THE GAME COUNT WAS MADE; AMENDING SECTION 87-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1755
455	<i>(Senate Bill No. 243; Wheat)</i> REVISING THE NAME OF THE AFFORDABLE HOUSING REVOLVING LOAN FUND AND MOVING IT FROM THE STATE SPECIAL REVENUE FUND TO THE HOUSING AUTHORITY ENTERPRISE FUND; AMENDING SECTIONS 90-6-131, 90-6-133, AND 90-6-134, MCA; AND PROVIDING AN EFFECTIVE DATE	1757
456	<i>(Senate Bill No. 263; Grimes)</i> CREATING A CHILD HEARSAY EXCEPTION IN CRIMINAL PROCEEDINGS; ALLOWING THE USE OF CHILD HEARSAY TESTIMONY REGARDING OUT-OF-COURT STATEMENTS MADE BY A CHILD VICTIM IN CRIMINAL PROCEEDINGS INVOLVING SEXUAL OFFENSES AND OTHER CRIMES OF VIOLENCE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.	1759
457	<i>(Senate Bill No. 363; McNutt)</i> LIMITING AWARDS OF PUNITIVE DAMAGES IN CIVIL CASES OTHER THAN CLASS ACTION LAWSUITS; AND AMENDING SECTION 27-1-220, MCA	1762
458	<i>(Senate Bill No. 364; Cooney)</i> PROVIDING THAT EXPOSING A CHILD TO THE CRIMINAL DISTRIBUTION, PRODUCTION, OR MANUFACTURE OF DANGEROUS DRUGS OR TO THE OPERATION OF AN UNLAWFUL CLANDESTINE LABORATORY CONSTITUTES CHILD ABUSE OR NEGLECT FOR PURPOSES OF THE CHILD ABUSE AND NEGLECT STATUTES; AMENDING SECTION 41-3-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1762
459	<i>(Senate Bill No. 366; Grimes)</i> REVISING THE RECLAMATION REQUIREMENTS FOR METAL MINES; AMENDING SECTION 82-4-336, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	1766
460	<i>(Senate Bill No. 383; Bales)</i> PROVIDING THAT CERTAIN ACTIVITIES ARE NOT PROHIBITED ACTIVITIES WITH REGARD TO WATER QUALITY; AMENDING SECTION 75-5-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1768

- 1769
 461 *(Senate Bill No. 392; Bales)* REQUIRING THAT WHEN THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS DEVELOPS A MANAGEMENT PLAN, THAT MANAGEMENT PLAN IS SUBJECT TO THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT; AMENDING SECTION 87-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . .
- 1772
 462 *(Senate Bill No. 423; Black)* REVISING LIMITS ON CAMPAIGN CONTRIBUTIONS TO CANDIDATES FOR STATE AND OTHER PUBLIC OFFICES; REVISING LIMITS ON CONTRIBUTIONS THAT LEGISLATIVE CANDIDATES MAY RECEIVE FROM POLITICAL COMMITTEES; INCREASING THE AMOUNT THAT TRIGGERS REPORTS FOR AGGREGATE CONTRIBUTIONS BY EACH CONTRIBUTOR; INCREASING THE UPPER LIMIT UNDER WHICH A POLITICAL COMMITTEE MAY CLAIM TO BE IN COMPLIANCE WITH VOLUNTARY EXPENDITURE LIMITS; PROVIDING AN INFLATION FACTOR FOR CONTRIBUTION AND SPENDING LIMITS; INCREASING THE FINE FOR EXCEEDING THE EXPENDITURE LIMITS; AND AMENDING SECTIONS 13-37-216, 13-37-218, 13-37-229, AND 13-37-250, MCA . . .
- 1775
 463 *(Senate Bill No. 447; Grimes)* ELIMINATING THE TEST FOR LIABILITY FOR DISCLOSURE OF INFORMATION ABOUT AN EMPLOYEE'S OR FORMER EMPLOYEE'S PERFORMANCE; REPEALING SECTION 27-1-737, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . .
- 1775
 464 *(Senate Bill No. 450; Cocchiarella)* REVISING LAWS RELATED TO WORKERS' COMPENSATION; PROVIDING FOR DISCLOSURE AND COMMUNICATION OF HEALTH CARE INFORMATION FOR WORKERS' COMPENSATION PURPOSES WITHOUT PRIOR NOTICE TO THE INJURED EMPLOYEE; BARRING ATTORNEY FEES UNDER THE COMMON FUND DOCTRINE; EXCLUDING IMPAIRMENT RATINGS BASED EXCLUSIVELY ON PAIN; INCREASING THE PERMANENT PARTIAL DISABILITY BENEFIT MAXIMUM ENTITLEMENT FROM 350 TO 375 WEEKS; AMENDING SECTIONS 39-71-604, 39-71-611, 39-71-612, 39-71-703, AND 50-16-527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES . . .
- 1780
 465 *(House Bill No. 199; Harris)* AUTHORIZING A DRIVER TO POST A DRIVER'S LICENSE IN LIEU OF BAIL FOR TRAFFIC OFFENSES; REVISING LAW ENFORCEMENT AND DRIVER'S LICENSE LAWS TO COORDINATE WITH THE PRIVILEGE OF POSTING A LICENSE IN LIEU OF BAIL; REPLACING THE DRIVER'S LICENSE REINSTATEMENT FEE WITH AN ADMINISTRATIVE FEE; AND AMENDING SECTIONS 44-1-1101, 44-1-1102, 46-9-302, 46-9-401, 61-5-214, 61-5-215, AND 61-5-216, MCA . . .
- 466 *(House Bill No. 249; Barrett)* ALLOWING CITIES, TOWNS, AND CONSOLIDATED GOVERNMENTS TO ADOPT PLANS TO CONTROL, REMOVE, AND RESTRICT GAME ANIMALS WITHIN THE BOUNDARIES OF A CITY, TOWN, OR PORTION OF A CONSOLIDATED GOVERNMENT THAT WAS ORIGINALLY A CITY OR TOWN; PROVIDING AN EXEMPTION TO THE POWERS DENIED LOCAL GOVERNMENT WITH RESPECT TO CONTROLLING, REMOVING, AND RESTRICTING GAME ANIMALS; PROVIDING AN EXEMPTION TO THE RESTRICTION THAT A CONSOLIDATED GOVERNMENT MUST ADOPT EITHER A CITY OR COUNTY PROVISION; REQUIRING APPROVAL BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS PRIOR TO DEVELOPING AND IMPLEMENTING A PROGRAM FOR

	THE CONTROL, REMOVAL, AND RESTRICTION OF GAME ANIMALS FROM CITIES, TOWNS, OR CONSOLIDATED GOVERNMENTS THAT HAVE ADOPTED A PLAN; AMENDING SECTIONS 7-1-111, 7-3-1105, 7-3-1222, AND 7-5-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1784
467	<i>(House Bill No. 315; Lawson)</i> PROVIDING AN EXCEPTION FROM THE REQUIREMENT TO PAY STANDARD PREVAILING WAGES FOR AN EMPLOYER WHO, AS A NONPROFIT ORGANIZATION PROVIDING VOCATIONAL REHABILITATION, PERFORMS A PUBLIC WORKS CONTRACT FOR NONCONSTRUCTION SERVICES AND WHO EMPLOYS AN INDIVIDUAL WHOSE EARNING CAPACITY IS IMPAIRED BY A MENTAL, EMOTIONAL, OR PHYSICAL DISABILITY IF THE EMPLOYER CONFORMS WITH THE FEDERAL FAIR LABOR STANDARDS ACT AND PAYS THE INDIVIDUAL WAGES THAT ARE EQUAL TO OR ABOVE THE STATE'S MINIMUM WAGE; AMENDING SECTIONS 18-2-403 AND 18-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	1787
468	<i>(House Bill No. 545; Haines)</i> ESTABLISHING STATUTORY WATER QUALITY PERMIT FEES FOR SUCTION DREDGE OPERATIONS; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR SUCTION DREDGING SUBJECT TO THE PERMIT FEES; AMENDING SECTIONS 75-5-201, 75-5-516, AND 82-4-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1789
469	<i>(House Bill No. 669; Younkin)</i> REVISING THE PARK DEDICATION REQUIREMENTS FOR SUBDIVISIONS; PROVIDING THAT A SUBDIVIDER MAY DEDICATE LAND OUTSIDE OF A SUBDIVISION; AND AMENDING SECTION 76-3-621, MCA	1792
470	<i>(House Bill No. 677; Lindeen)</i> CLARIFYING THE JURISDICTION OF JUSTICES' COURTS WITH REGARD TO VIOLATIONS OF THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; CLARIFYING CRIMINAL FINES AND CIVIL PENALTIES; AMENDING SECTIONS 3-10-301, 3-10-601, AND 75-7-123, MCA; REPEALING SECTION 75-7-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	1794
471	<i>(House Bill No. 758; Devlin)</i> GENERALLY REVISING THE LAWS RELATED TO VIDEO GAMBLING MACHINES; IMPOSING AN ANNUAL PERMIT SURCHARGE FEE BASED ON THE NUMBER OF VIDEO GAMBLING MACHINES ON THE PREMISES; PROVIDING FOR THE PRORATION OF THE FEE; PROVIDING THAT THE FEE BE DEPOSITED IN THE STATE GENERAL FUND; EXEMPTING ESTABLISHMENTS THAT HAVE PERMITTED VIDEO GAMBLING MACHINES ON THE PREMISES FROM LOCAL GOVERNMENT ORDINANCES ON SMOKING THAT ARE MORE RESTRICTIVE THAN STATE LAWS ON SMOKING; AMENDING SECTION 23-5-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES	1797
472	<i>(Senate Bill No. 458; McNutt)</i> PROVIDING PROTECTION FOR RATEPAYERS AND FOR THE SHAREHOLDERS OF INNOCENT THIRD-PARTY PURCHASERS FOR THE ERRORS OR OMISSIONS OF A PREDECESSOR UTILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	1798
473	<i>(House Bill No. 7; Witt)</i> APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM;	

PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AMENDING SECTION 2, CHAPTER 419, LAWS OF 1999, AND SECTION 2, CHAPTER 232, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE. 1799

474 (House Bill No. 159; Haines) GENERALLY REVISING FOOD ESTABLISHMENT AND NONPRESCRIPTION DRUG MANUFACTURING LAWS; CREATING A STATUTORY SCHEME FOR THE LICENSURE AND REGULATION OF WHOLESALE FOOD ESTABLISHMENTS AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURERS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT; PROVIDING FOR INJUNCTIONS, CIVIL ACTIONS, PROSECUTION, AND CIVIL PENALTIES AND CRIMINAL PENALTIES FOR VIOLATIONS OF WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURING LAWS; PROVIDING FOR VALIDATION OF LICENSES BY LOCAL HEALTH OFFICERS; PROVIDING FOR THE DENIAL OR CANCELLATION OF LICENSES; PROVIDING FOR INSPECTIONS AND INVESTIGATIONS BY STATE AND LOCAL HEALTH OFFICERS, SANITARIANS-IN-TRAINING, AND REGISTERED SANITARIANS; CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPARTMENT TO BE USED IN ADMINISTERING WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL DRUG MANUFACTURING LAWS; REQUIRING THE DEPARTMENT TO PAY LOCAL BOARDS OF HEALTH FOR INSPECTIONS AND ENFORCEMENT; CLARIFYING THE DUTIES OF LOCAL HEALTH OFFICERS; GENERALLY REVISING LAWS GOVERNING FOOD ESTABLISHMENTS TO PROVIDE CONSISTENCY WITH THE WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURING LAWS AND TO CLARIFY THE LAWS THAT PERTAIN TO RETAIL FOOD ESTABLISHMENTS; AMENDING SECTIONS 30-16-301, 50-2-118, 50-50-102, 50-50-106, 50-50-107, 50-50-108, AND 50-50-110, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 1805

475 (House Bill No. 190; Younkin) GENERALLY REVISING ELECTION LAWS; CLARIFYING THE TIMES FOR HOLDING SPECIAL ELECTIONS; IMPLEMENTING THE PROVISIONS OF THE HELP AMERICA VOTE ACT CONCERNING A STATEWIDE VOTER REGISTRATION LIST, INFORMATION SHARING, AND PROVISIONAL VOTING; PROVIDING THAT ALL ELECTORS MUST PRESENT IDENTIFICATION BEFORE VOTING; PROVIDING THAT A CANDIDATE MAY NOT FILE FOR MORE THAN ONE OFFICE; REQUIRING THAT A DECLARATION OF INTENT FILED BY A WRITE-IN CANDIDATE IS NOT VALID UNTIL THE FILING FEE IS PAID; REVISING PROVISIONS REGARDING VOTER INSTRUCTIONS THAT MUST BE DISPLAYED; REVISING WHEN ABSENTEE BALLOTS MUST BE AVAILABLE; REQUIRING THAT AN APPLICATION FOR AN ABSENTEE BALLOT INCLUDE THE ELECTOR'S BIRTH DATE; CLARIFYING HOW ABSENTEE BALLOT APPLICATIONS MUST BE PROVIDED TO THE ELECTION ADMINISTRATOR; PROVIDING THAT VOTING INSTRUCTIONS BE ENCLOSED WITH ABSENTEE BALLOT MAILINGS IRRESPECTIVE OF WHETHER THE ELECTOR IS OUT OF THE STATE; PROVIDING THAT STATE EMPLOYEE TIME MAY BE SPENT ON THE YOUTH VOTING PROGRAM; REVISING THE TIME WITHIN WHICH A CANVASSING BOARD IS REQUIRED TO MEET TO CANVASS THE RETURNS; PROVIDING THAT THE VOTER

INFORMATION PAMPHLET MAY BE ADDRESSED TO THE CURRENT RESIDENT AT AN ADDRESS; REVISING THE TIME BY WHICH THE VOTER INFORMATION PAMPHLET MUST BE MAILED; ELIMINATING CERTAIN CHALLENGES TO AN ELECTOR'S ELIGIBILITY TO VOTE; AMENDING SECTIONS 13-1-101, 13-1-104, 13-1-301, 13-2-115, 13-2-116, 13-2-122, 13-2-123, 13-2-205, 13-2-220, 13-2-402, 13-2-513, 13-2-514, 13-2-601, 13-10-201, 13-10-211, 13-13-112, 13-13-114, 13-13-201, 13-13-204, 13-13-205, 13-13-212, 13-13-213, 13-13-214, 13-13-232, 13-13-241, 13-13-301, 13-14-112, 13-14-113, 13-15-111, 13-15-401, 13-15-402, 13-19-313, 13-22-107, 13-27-410, AND 13-37-250, MCA; REPEALING SECTIONS 13-2-114, 13-2-202, 13-2-203, 13-2-219, 13-2-403, 13-2-404, 13-2-515, 13-2-603, 13-13-304, 13-13-305, 13-13-306, 13-13-307, 13-13-309, 13-13-310, AND 13-13-311, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1817

476 *(House Bill No. 517; Wilson)* CLARIFYING THAT A CITY OR COUNTY MAY IMPOSE MILL LEVIES FOR AIRPORTS EVEN IF THE AIRPORT OR AIRPORT AUTHORITY HAS NOT MADE A LEVY REQUEST IN THE PRIOR 2 YEARS; AMENDING SECTION 15-10-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1843

477 *(House Bill No. 538; Rome)* GENERALLY REVISING THE LAWS GOVERNING CERTIFICATES OF TITLE AND REGISTRATION OF CERTAIN MOTOR VEHICLES; IMPLEMENTING BUSINESS PRACTICES RECOMMENDED AS PART OF THE MOTOR VEHICLE INFORMATION TECHNOLOGY PROJECT AUTHORIZED BY THE 57TH LEGISLATURE; ENABLING A GRADUAL TRANSITION FROM PAPER-BASED TO ELECTRONIC TRANSACTIONS FOR VEHICLE TITLING; REMOVING STATUTORY IMPEDIMENTS TO THE USE OF ELECTRONIC TRANSACTIONS FOR ISSUING TITLES FOR AND THE REGISTRATION OF CERTAIN VEHICLES; DEFINING CERTAIN TERMS RELATED TO THE ISSUING OF A TITLE AND THE REGISTRATION OF CERTAIN VEHICLES; CLARIFYING THE REQUIREMENTS FOR APPLYING FOR, ISSUING, AND TRANSFERRING A CERTIFICATE OF TITLE; REVISING AND CLARIFYING DUTIES OF THE DEPARTMENT OF JUSTICE AND COUNTY TREASURERS CONCERNING THE ISSUING OF TITLES AND REGISTRATION PROCESSES; REQUIRING ISSUANCE OF A CERTIFICATE OF TITLE ONLY IF REQUESTED BY THE VEHICLE OWNER; ALLOWING FOR DELAYED TITLE ISSUANCE; AUTHORIZING THE DEPARTMENT TO REFUSE ISSUANCE OF A CERTIFICATE OF TITLE IN CERTAIN CIRCUMSTANCES; CLARIFYING THE REQUIREMENTS FOR VOLUNTARY AND INVOLUNTARY TRANSFER OF VEHICLE INTERESTS; CLARIFYING THE REQUIREMENTS FOR ISSUANCE OF A CERTIFICATE OF TITLE FOR A SALVAGE VEHICLE; AUTHORIZING AND STANDARDIZING ISSUANCE OF TEMPORARY REGISTRATION PERMITS TO ALLOW THE OPERATION OF A VEHICLE PRIOR TO COMPLETION OF THE ISSUANCE OF TITLE PROCESS; REPLACING THE TERM "CERTIFICATE OF OWNERSHIP" WITH "CERTIFICATE OF TITLE" FOR CERTAIN MOTOR VEHICLES; APPLYING THE CERTIFICATE OF TITLE REQUIREMENTS FOR PASSENGER VEHICLES TO MOTORBOATS, SAILBOATS 12 FEET IN LENGTH OR LONGER, AND SNOWMOBILES; REVISING THE AUTHORITY OF CERTAIN VEHICLE DEALERS TO ISSUE TEMPORARY REGISTRATION PERMITS; CLARIFYING THE DEFINITION OF "OFF-HIGHWAY VEHICLE"; CLARIFYING THE REQUIREMENTS FOR OFF-HIGHWAY VEHICLE DECAL REGISTRATION; AUTHORIZING THE USE OF AN ELECTRONIC RECORD OF TITLE AND AN ELECTRONIC RECORD OF REGISTRATION FOR VEHICLE CERTIFICATE OF TITLE AND

REGISTRATION TRANSACTIONS; CLARIFYING THE RECORDKEEPING DUTIES OF THE DEPARTMENT CONCERNING VEHICLES; CLARIFYING AND STANDARDIZING THE PROCESSES FOR THE FILING AND PERFECTION OF CERTAIN SECURITY INTERESTS IN A MOTOR VEHICLE; CLARIFYING THAT A CERTIFICATE OF TITLE IS PRIMA FACIE EVIDENCE OF FACTS IN THE TITLE; CLARIFYING REPORTING REQUIREMENTS FOR STOLEN VEHICLES; REVISING THE DEPARTMENT'S AUTHORITY TO DEVELOP AND IMPLEMENT A PILOT PROGRAM FOR ELECTRONIC CERTIFICATE OF TITLE AND REGISTRATION TRANSACTIONS; CLARIFYING THE REQUIREMENTS TO OBTAIN A TITLE FOR A VEHICLE AND THE EXEMPTIONS FROM TITLING FOR CERTAIN VEHICLES; CLARIFYING WHEN A CERTIFICATE OF TITLE MUST BE CANCELED; INCREASING CERTAIN FEES RELATED TO THE ISSUING OF A TITLE OR THE REGISTRATION OF CERTAIN MOTOR VEHICLES; REVISING THE REQUIREMENTS FOR FURNISHING A BOND IN LIEU OF AN ASSIGNED CERTIFICATE OF TITLE; ALLOWING ISSUANCE OF A CERTIFICATE OF TITLE UNDER CERTAIN CONDITIONS; REVISING THE REQUIREMENTS FOR THE INITIAL REGISTRATION OF AND ANNUAL RENEWAL OF REGISTRATION FOR CERTAIN MOTOR VEHICLES; CLARIFYING THE REGISTRATION REQUIREMENTS FOR VEHICLES ISSUED A CERTIFICATE OF TITLE AND REGISTERED IN ANOTHER JURISDICTION AND USED FOR GAINFUL OCCUPATION IN MONTANA; CLARIFYING THE GRACE PERIOD FOR A CERTIFICATE OF TITLE AND REGISTRATION OF A VEHICLE FOLLOWING A TRANSFER OF OWNERSHIP; CLARIFYING THE REQUIREMENTS FOR A NEW OR USED MOTOR VEHICLE DEALER TO ISSUE A TEMPORARY REGISTRATION PERMIT; CLARIFYING THE LIMITATIONS ON THE TRANSFER OF TEMPORARY REGISTRATION PERMITS FROM DEALER TO DEALER; AMENDING SECTIONS 15-1-116, 15-1-117, 15-1-121, 15-1-122, 23-2-502, 23-2-508, 23-2-513, 23-2-601, 23-2-611, 23-2-614, 23-2-615, 23-2-616, 23-2-619, 23-2-622, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 23-2-801, 23-2-804, 23-2-814, 23-2-817, 23-2-818, 30-9A-311, 31-1-816, 40-5-248, 61-1-102, 61-1-509, 61-3-101, 61-3-103, 61-3-106, 61-3-107, 61-3-109, 61-3-201, 61-3-202, 61-3-203, 61-3-204, 61-3-205, 61-3-206, 61-3-207, 61-3-208, 61-3-210, 61-3-211, 61-3-212, 61-3-303, 61-3-311, 61-3-312, 61-3-317, 61-3-322, 61-3-342, 61-3-411, 61-3-412, 61-3-456, 61-3-519, 61-3-562, 61-3-603, 61-3-701, 61-4-104, 61-4-111, 61-4-112, 61-4-120, 61-4-121, 61-12-406, 75-10-512, AND 75-10-513, MCA; REPEALING SECTIONS 23-2-509, 23-2-510, 23-2-520, 23-2-612, 23-2-613, 23-2-620, 23-2-810, 23-2-811, 23-2-812, 23-2-813, 61-3-105, 61-3-305, AND 61-3-518, MCA, AND SECTION 4, CHAPTER 90, LAWS OF 1997, SECTION 2, CHAPTER 260, LAWS OF 1999, AND SECTION 9, CHAPTER 394, LAWS OF 2001; AND PROVIDING A DELAYED EFFECTIVE DATE AND APPLICABILITY DATES

1845

478 (House Bill No. 734; Lawson) CHANGING THE DESIGNATED STATE AGENCY FOR THE DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL TO THE DEPARTMENT OF COMMERCE; AMENDING SECTIONS 2-15-2204 AND 53-20-206, MCA; AND PROVIDING AN EFFECTIVE DATE.

1924

479 (Senate Bill No. 76; Schmidt) ELIMINATING CERTAIN SPECIAL EDUCATION DEFINITIONS TO COMPLY WITH FEDERAL CHANGES MADE BY CONGRESS IN THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-401 AND 20-7-436, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

1928

480 (*Senate Bill No. 89; Tash*) EXEMPTING PROPERTY HELD BY A LOCAL GOVERNMENT ENTITY FROM THE UNIFORM UNCLAIMED PROPERTY ACT; AMENDING SECTION 70-9-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1931

481 (*Senate Bill No. 115; Mahlum*) EXTENDING AND REVISING THE STATUTORY APPROPRIATION, FOR THE FISCAL YEARS BEGINNING JULY 1, 2005, AND ENDING JUNE 30, 2010, OF THE INTEREST FROM \$140 MILLION OF THE COAL SEVERANCE TAX PERMANENT FUND THAT IS DEPOSITED IN THE GENERAL FUND FOR THE COOPERATIVE DEVELOPMENT CENTER, FOR THE GROWTH THROUGH AGRICULTURE PROGRAM, FOR A SMALL BUSINESS DEVELOPMENT CENTER, FOR A SMALL BUSINESS INNOVATIVE RESEARCH PROGRAM, FOR CERTIFIED COMMUNITIES, FOR A MANUFACTURING EXTENSION CENTER, FOR EXPORT TRADE ENHANCEMENT, AND FOR RESEARCH AND COMMERCIALIZATION PROJECTS; AMENDING SECTIONS 15-35-108 AND 17-7-502, MCA, AND SECTION 10, CHAPTER 10, SPECIAL LAWS OF MAY 2000; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE. 1934

482 (*Senate Bill No. 143; Bohlinger*) DEFINING "CHARITABLE GIFT ANNUITY", "CHARITABLE ORGANIZATION", AND "QUALIFIED CHARITABLE GIFT ANNUITY"; PROVIDING THAT A QUALIFIED CHARITABLE GIFT ANNUITY IS NOT INSURANCE; REQUIRING THAT CHARITABLE ORGANIZATIONS ENTERING INTO A CHARITABLE GIFT ANNUITY AGREEMENT GIVE NOTICE TO DONORS AND THE STATE AUDITOR; PROVIDING A FINE FOR FAILURE TO GIVE PROPER NOTICES; CONFORMING CHARITABLE GIFT ANNUITY LAWS TO LAWS RELATED TO DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS AND TAX CREDITS FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS; AMENDING SECTIONS 15-30-121, 15-30-165, AND 15-31-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1938

483 (*Senate Bill No. 194; Tash*) AUTHORIZING WATER ADMINISTRATION INTERIM AGREEMENTS TO PROVIDE FOR JOINT TRIBAL AND STATE ADMINISTRATION OF NEW WATER USES ON A RESERVATION PENDING FINAL ADJUDICATION OF INDIAN RESERVED WATER RIGHTS IF A COURT OF COMPETENT JURISDICTION HAS HELD THAT THE DEPARTMENT LACKS EXCLUSIVE AUTHORITY TO ISSUE NEW WATER USE PERMITS WITHIN THE EXTERIOR BOUNDARIES OF THE RESERVATION; AMENDING SECTION 85-2-708, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1945

484 (*Senate Bill No. 230; Cromley*) ADOPTING THE MONTANA PRUDENT INVESTOR RULE; PROVIDING STANDARDS OF CARE AND DUTIES OF TRUSTEES IN MAKING INVESTMENTS AND MANAGING TRUST ASSETS; AMENDING SECTIONS 72-34-113 AND 72-34-114, MCA; AND REPEALING SECTION 72-34-121, MCA. 1947

485 (*Senate Bill No. 232; Mahlum*) TRANSFERRING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION TO THE DEPARTMENT OF COMMERCE FOR ADMINISTRATIVE PURPOSES; ALLOWING NEGOTIATIONS FOR AN INDIRECT ADMINISTRATIVE RATE; AMENDING SECTION 22-3-1002, MCA; AND PROVIDING AN EFFECTIVE DATE. 1951

486 (*Senate Bill No. 282; Squires*) REQUIRING THAT TEMPORARY TOTAL DISABILITY BENEFITS NOT BE PAID FOR THE LESSER OF EITHER

THE FIRST 32 HOURS OR 4 DAYS' LOSS OF WAGES IF A CLAIMANT IS TOTALLY DISABLED AND UNABLE TO WORK FOR 5 OR MORE DAYS BECAUSE OF AN INJURY; AMENDING SECTION 39-71-736, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1952

487 (Senate Bill No. 288; Mangan) REVISING THE COUNTY COMPENSATION BOARD; ALLOWING TWO TO FOUR TAXPAYER MEMBERS; CLARIFYING THAT A CHARTER COUNTY AND A CHARTER, CONSOLIDATED CITY-COUNTY ARE NOT REQUIRED TO CREATE A COUNTY COMPENSATION BOARD; AND AMENDING SECTION 7-4-2503, MCA 1953

488 (Senate Bill No. 321; Laible) CHANGING THE MEMBERSHIP OF THE WATER POLLUTION CONTROL ADVISORY COUNCIL; AMENDING SECTION 2-15-2107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1955

489 (Senate Bill No. 337; Tropila) REVISING THE CIVIL LIABILITY OF BUSINESSES AND SOCIAL HOSTS FOR INJURIES INVOLVING ALCOHOL CONSUMPTION; ESTABLISHING CRITERIA GOVERNING LIABILITY; PROVIDING THAT THE JURY OR TRIER OF FACT MAY CONSIDER THE CONSUMPTION OF ALCOHOL IN ADDITION TO THE SALE OR SERVICE IN DETERMINING THE CAUSE OF ANY INJURY OR DAMAGE; PROVIDING THAT NO CIVIL ACTION MAY BE BROUGHT BY THE PERSON CONSUMING THE ALCOHOLIC BEVERAGE UNLESS THE CONSUMER WAS A MINOR OR WAS COERCED; PROVIDING THAT A CIVIL ACTION MUST BE COMMENCED WITHIN 2 YEARS OF THE SERVICE; LIMITING NONECONOMIC AND PUNITIVE DAMAGES; ALLOWING CRIMINAL AND INTENTIONAL ACTS OF A PERSON CAUSING AN INJURY TO BE ADMITTED INTO EVIDENCE; AMENDING SECTION 27-1-710, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1956

490 (Senate Bill No. 400; Toole) REVISING THE RAILROAD VANDALISM PREVENTION ACT; REDUCING THE PENALTIES; INCREASING FROM \$500 TO \$1,000 THE AMOUNT OF PROPERTY DAMAGE NEEDED TO MAKE THE OFFENSE A FELONY; MAKING THE ACT PERMANENT; AMENDING SECTION 69-14-1205, MCA; REPEALING SECTION 8, CHAPTER 432, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1957

491 (Senate Bill No. 401; Wheat) REVISING AND EXPANDING THE MEMBERSHIP OF THE BOARD OF VETERANS' AFFAIRS; SPECIFYING THE DUTIES OF THE BOARD; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT AND A FEDERAL SPECIAL REVENUE ACCOUNT TO BE USED FOR VETERANS' SERVICES; AUTHORIZING THE BOARD TO SPONSOR PATRIOTIC LICENSE PLATES; AUTHORIZING COUNTIES TO PROVIDE FOR VETERANS' SERVICE OFFICERS; ALLOWING THE BOARD TO ACCEPT FEDERAL FUNDS AND DONATIONS; SPECIFYING THE ACCOUNT TO WHICH DONATIONS ARE DEPOSITED; TRANSFERRING FROM THE DEPARTMENT OF MILITARY AFFAIRS TO THE BOARD THE OVERSIGHT OF AND RULEMAKING AUTHORITY FOR STATE VETERANS' CEMETERIES; AUTHORIZING ADDITIONAL VETERANS' CEMETERIES; TRANSFERRING FROM THE DEPARTMENT OF MILITARY AFFAIRS TO THE BOARD OF VETERANS' AFFAIRS THE OVERSIGHT OF A SPECIAL REVENUE ACCOUNT FOR VETERANS' CEMETERIES; ALLOWING INCOME TAX DEDUCTIONS FOR CONTRIBUTIONS TO STATE VETERANS' SERVICES; REVISING

- CERTAIN VEHICLE LICENSE PLATE REGISTRATION FEES TO BENEFIT STATE VETERANS' SERVICES; AMENDING SECTIONS 2-15-1205, 10-2-102, 10-2-106, 10-2-601, 10-2-602, 10-2-603, 15-1-122, AND 61-3-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . . 1958
- 492 (*Senate Bill No. 441; Ryan*) AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO ISSUE IMPACT AID REVENUE BONDS; DEFINING "FEDERAL IMPACT AID BASIC SUPPORT PAYMENT", "GENERAL OBLIGATION BONDS", AND "IMPACT AID REVENUE BONDS"; PLACING A LIMIT ON THE MAXIMUM AMOUNT OF IMPACT AID BONDS THAT A SCHOOL DISTRICT MAY ISSUE; PROVIDING SECURITY FOR IMPACT AID RESERVE BONDS; REQUIRING TRUSTEES TO SPECIFY IN A RESOLUTION, AN ELECTION PETITION, AND ON THE BOND ELECTION BALLOT WHETHER BONDS WILL BE GENERAL OBLIGATION OR IMPACT AID REVENUE BONDS; PROVIDING THAT IMPACT AID REVENUE BONDS MUST BE PAID SOLELY FROM FEDERAL IMPACT BASIC SUPPORT PAYMENTS RECEIVED AND DO NOT PLEDGE THE FULL FAITH AND CREDIT AND TAXING AUTHORITY OF THE SCHOOL DISTRICT; PROVIDING THAT THE TRUSTEES PROVIDE A COUNTY TREASURER WITH AN IMPACT AID REVENUE BOND DEBT SERVICE SCHEDULE AND A SEPARATE IMPACT AID REVENUE BOND DEBT SERVICE FUND AND AUTHORIZING ESTABLISHMENT OF AN IMPACT AID REVENUE BOND DEBT SERVICE RESERVE ACCOUNT; PROVIDING THAT THE GUARANTEED TAX BASE IS LIMITED TO GENERAL OBLIGATION BONDS; AMENDING SECTIONS 20-9-371, 20-9-403, 20-9-406, 20-9-408, 20-9-422, 20-9-423, 20-9-426, 20-9-427, 20-9-430, 20-9-433, 20-9-437, 20-9-438, 20-9-439, AND 20-9-440, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . 1968
- 493 (*Senate Bill No. 444; Tester*) GENERALLY REVISING SECURITIES LAWS, INSURANCE LAWS, AND ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE LAWS TO PROVIDE FOR THE PROTECTION OF CONSUMERS AND SENIOR CITIZENS AND PERSONS WITH DEVELOPMENTAL DISABILITIES WITH RESPECT TO THE MARKETING OF SECURITIES AND INSURANCE PRODUCTS; RESTRICTING THE MANNER IN WHICH INSURANCE PRODUCERS MAY ACT AS LEGAL GUARDIANS OF CLIENTS; EXPANDING THE DEFINITION OF "SECURITY" TO INCLUDE VIATICAL SETTLEMENT PURCHASE AGREEMENTS; MODIFYING THE DEFINITION OF "VIATICAL SETTLEMENT CONTRACT"; PROVIDING FOR PENALTIES AND OTHER REMEDIES WITH RESPECT TO PERSONS FAILING TO RESPOND TO CERTAIN INFORMATION REQUESTS OF THE INSURANCE COMMISSIONER; EXPANDING THE SCOPE FOR WHICH INJUNCTIONS AND OTHER REMEDIES ARE AVAILABLE UNDER INSURANCE LAWS; PROVIDING ADDITIONAL PENALTIES FOR DOMESTIC INSURERS FAILING TO PROPERLY MAINTAIN RECORDS; MODIFYING PENALTIES FOR INSURANCE PRODUCERS OR ADJUSTERS OPERATING WITHOUT A LICENSE; PROVIDING THAT THE DEFINITION OF "EXPLOITATION" UNDER ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE LAWS INCLUDES ACTS DONE IN THE COURSE OF AN OFFER OR SALE OF SECURITIES OR INSURANCE PRODUCTS; IMPOSING A POSSIBLE FELONY SENTENCE FOR A CONVICTION OF ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE; AMENDING SECTIONS 30-10-103, 33-1-315, 33-1-318, 33-3-401, 33-17-1004, 33-20-1302, 33-20-1315, 52-3-803, AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . 1978

- 494 *(House Bill No. 3; Brueggeman)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

1991
- 495 *(House Bill No. 4; Brueggeman)* APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2003; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEAR 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

1992
- 496 *(House Bill No. 10; Maedje)* ALLOCATING REVENUE FROM THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX TO MAKE DEBT SERVICE PAYMENTS ON CERCLA BONDS; CREATING A CERCLA COST RECOVERY SPECIAL REVENUE ACCOUNT; COORDINATING CERTAIN PROVISIONS OF THE CERCLA MATCH DEBT SERVICE ACCOUNT, CERCLA BONDS, THE HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT, AND THE CERCLA COST RECOVERY SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-38-106, 75-10-621, 75-10-622, AND 75-10-623, MCA; AND PROVIDING AN EFFECTIVE DATE.

1998
- 497 *(House Bill No. 12; Kasten)* DEFINING "ENERGY COST SAVINGS"; CLARIFYING DEBT SERVICE FOR APPROPRIATIONS OF ENERGY COST SAVINGS; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM AND CREATING A STATE DEBT; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2004 AND 2005; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; AMENDING SECTIONS 90-4-602 AND 90-4-614, MCA; AND PROVIDING AN EFFECTIVE DATE.

2003
- 498 *(House Bill No. 18; Shockley)* INCREASING THE USER SURCHARGE FOR COURT INFORMATION TECHNOLOGY; MAKING PERMANENT THE USER SURCHARGE AND THE ACCOUNT ESTABLISHED FOR COURT INFORMATION TECHNOLOGY; AMENDING SECTION 3-1-317, MCA, SECTION 4, CHAPTER 361, LAWS OF 1995, AND SECTION 1, CHAPTER 71, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

2005
- 499 *(House Bill No. 100; Jent)* GENERALLY REVISING THE LAWS RELATING TO GAME BIRDS AND SHOOTING PRESERVES; REVISING THE GENERAL DEFINITION OF "UPLAND GAME BIRDS" BY REMOVING QUAIL AND SPECIFYING RING-NECKED PHEASANTS; CONFORMING THE DEFINITION OF "GAME BIRDS" IN THE GAME BIRD FARM STATUTES TO THE GENERAL DEFINITION OF "UPLAND GAME BIRDS"; PROVIDING THAT POSSESSION, TRANSPORTATION, SALE, OR PURCHASE OF CAPTIVE-REARED MIGRATORY WATERFOWL IS NOT PROHIBITED; CONFORMING THE LAW GOVERNING VIOLATION OF CLOSED SEASON ON CERTAIN GAME BIRDS TO THE DEFINITION OF "UPLAND GAME BIRDS"; REVISING THE FEES FOR SHOOTING PRESERVE LICENSES; REVISING THE KINDS OF BIRDS THAT MAY BE HUNTED IN SHOOTING PRESERVES; ESTABLISHING MINIMUM AGE, NUMBER, AND MARKING REQUIREMENTS FOR RELEASED BIRDS; AUTHORIZING THE DEPARTMENT TO IMPOSE RESTRICTIONS ON NEW SHOOTING PRESERVE LICENSES; REVISING REGISTRATION BOOK REQUIREMENTS FOR SHOOTING PRESERVE OPERATORS;

AMENDING SECTIONS 87-2-101, 87-3-111, 87-3-402, 87-4-503, 87-4-522, 87-4-524, 87-4-526, AND 87-4-901, MCA; AND PROVIDING AN EFFECTIVE DATE 2006

500 *(House Bill No. 577; Brueggeman)* PROVIDING THAT EIGHT OR MORE EMPLOYERS WITH A TOTAL OF MORE THAN 500 EMPLOYEES MAY APPLY TO THE INSURANCE COMMISSIONER TO ORGANIZE A RECIPROCAL INSURER FOR THE PURPOSE OF PROVIDING WORKERS' COMPENSATION COVERAGE FOR THEIR EMPLOYEES; AND AMENDING SECTION 33-5-201, MCA. 2011

501 *(House Bill No. 588; Matthews)* RESTRICTING MIDTERM INCREASES IN RATES OR DECREASES IN COVERAGE ON CONTRACTS OF PROPERTY OR CASUALTY INSURANCE UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 33-15-1101, MCA 2012

502 *(House Bill No. 735; Fisher)* REVISING THE JOB REGISTRY FOR STATE EMPLOYEES WHOSE POSITIONS ARE ELIMINATED AS A RESULT OF PRIVATIZATION, REORGANIZATION, OR REDUCTION IN FORCE; AMENDING SECTION 2-18-1203, MCA; AND PROVIDING AN EFFECTIVE DATE 2014

503 *(House Bill No. 741; Lindeen)* STATUTORILY ESTABLISHING THE MONTANA CONSENSUS COUNCIL; ATTACHING THE COUNCIL TO THE DEPARTMENT OF ADMINISTRATION FOR ADMINISTRATIVE PURPOSES; AND PROVIDING AN EFFECTIVE DATE 2015

504 *(Senate Bill No. 95; Stonington)* GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND ADOPTION; PROVIDING THAT VOLUNTARY SURRENDER OF A CHILD SOLELY BECAUSE OF INABILITY TO ACCESS PUBLICLY FUNDED SERVICES IS NOT ABANDONMENT; REVISING DEFINITIONS; REVISING APPEAL PROVISIONS; PROVIDING 20 DAYS WITHIN FILING OF AN INITIAL PETITION FOR A SHOW CAUSE HEARING; PROVIDING FOR LONG-TERM CUSTODY AS A DISPOSITION; PROVIDING THAT A DISPOSITION THAT REQUIRES AN EXPENDITURE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE MADE UNLESS THE COURT FINDS AFTER A HEARING THAT THE EXPENDITURE IS REASONABLE AND RESOURCES ARE AVAILABLE; PROVIDING EXCEPTIONS IF NECESSARY FOR THE FEDERAL INDIAN CHILD WELFARE ACT; PROVIDING FOR AN EXTENSION OF TIMEFRAMES AS AN ALLOWED STIPULATION; PROVIDING FOR PLACEMENT OF A CHILD WITH A NONCUSTODIAL PARENT WITH NO FURTHER DEPARTMENTAL OBLIGATION; PROVIDING THAT AGENCIES ALLOWED TO PLACE CHILDREN IN ADOPTION MUST BE LICENSED IN MONTANA; ALLOWING WAIVER OF A POSTPLACEMENT EVALUATION FOR ADOPTION BY AN EXTENDED FAMILY MEMBER; PROVIDING FOR RELEASE OF CERTAIN ADOPTION INFORMATION NECESSARY TO ASSIST AN ADOPTEE TO BECOME ENROLLED IN OR A MEMBER OF AN INDIAN TRIBE; PROVIDING FOR RELEASE OF HEALTH CARE INFORMATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING DEFINITIONS OF YOUTH RESIDENTIAL SERVICES; PROVIDING FOR LICENSURE OF KINSHIP FOSTER HOMES AND YOUTH SHELTER CARE FACILITIES; ELIMINATING THE REQUIREMENT FOR REVIEW FOLLOWING TERMINATION OF PARENTAL RIGHTS; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-103, 41-3-113, 41-3-205, 41-3-301, 41-3-422, 41-3-427, 41-3-432, 41-3-434, 41-3-437, 41-3-438, 41-3-442, 41-3-445, 41-3-604, 41-3-607, 41-3-609, 41-3-611, 41-3-1008, 42-1-103, 42-3-212, 42-6-102, 42-6-109, 50-16-535, 50-16-536, 50-16-603, 50-16-605, 52-2-115, 52-2-602, 52-2-603,

76-2-411, AND 76-2-412, MCA; AND REPEALING SECTION 41-3-610, MCA. 2016

505 (*Senate Bill No. 155; Taylor*) REVISING THE TAXATION OF CLASS EIGHT PROPERTY BY PROVIDING THAT THE COMPUTATIONS FOR DETERMINING WHETHER THE CLASS EIGHT RATE IS TO BE REDUCED ARE TO BE MADE AT LEAST 1 YEAR AND 2 MONTHS PRIOR TO THE AFFECTED TAX YEAR TO ALLOW FOR LEGISLATIVE ACTION; CLARIFYING THE DATA USED BY THE DEPARTMENT OF REVENUE TO CALCULATE THE PERCENTAGE GROWTH INFLATION-ADJUSTED MONTANA WAGE AND SALARY INCOME FOR DETERMINING WHETHER THE CLASS EIGHT TAX RATE IS TO BE REDUCED; AND AMENDING SECTION 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TRANSITION PROVISION 2049

506 (*Senate Bill No. 231; Cromley*) REPLACING THE REVISED UNIFORM PRINCIPAL AND INCOME ACT WITH THE MONTANA UNIFORM PRINCIPAL AND INCOME ACT; AND REPEALING SECTIONS 72-34-401, 72-34-402, 72-34-403, 72-34-404, 72-34-405, 72-34-406, 72-34-407, 72-34-408, 72-34-409, 72-34-410, 72-34-411, 72-34-412, AND 72-34-416, MCA 2051

507 (*Senate Bill No. 244; Story*) PROVIDING THAT A CONTRACT HOLDER OR EMPLOYEE OF A WATER USERS' ASSOCIATION THAT PAYS OPERATION OR MAINTENANCE COSTS ON A STATE-OWNED RESERVOIR MAY NOT BE REQUIRED TO PURCHASE A DAY-USE PERMIT TO ACCESS THAT RESERVOIR; REQUIRING THE ASSOCIATION TO ISSUE ANNUAL IDENTIFICATION CARDS TO ELIGIBLE CONTRACT HOLDERS AND EMPLOYEES OF WATER USERS' ASSOCIATIONS; AMENDING SECTION 23-1-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2066

508 (*Senate Bill No. 246; Glaser*) REVISING THE LAWS RELATED TO THE ANNEXATION OF PROPERTY INCLUDED IN A FIRE SERVICE AREA; REQUIRING A BOARD OF COUNTY COMMISSIONERS TO ALTER THE BOUNDARIES OF A FIRE SERVICE AREA TO EXCLUDE AN AREA THAT IS ANNEXED; REQUIRING THAT AN ANNEXING MUNICIPALITY BE NOTIFIED IN ORDER TO PREVENT THE PROPERTY OWNERS OF THE AREA TO BE ANNEXED FROM ASSUMING FINANCIAL RESPONSIBILITY TO BOTH THE MUNICIPALITY AND THE FIRE SERVICE AREA; AND AMENDING SECTIONS 7-33-2401 AND 7-33-2404, MCA. 2067

509 (*Senate Bill No. 247; Cobb*) ESTABLISHING A DEFAULT ELECTRICITY SUPPLY PROCUREMENT PROCESS; REQUIRING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES THAT ESTABLISH CRITERIA THAT GUIDE THE DEFAULT ELECTRICITY SUPPLY PROCUREMENT PROCESS; PROVIDING OBJECTIVES FOR THE DEFAULT SUPPLIER FOR DEFAULT SUPPLY PLANNING, PORTFOLIO MANAGEMENT, AND RESOURCE PROCUREMENT; REQUIRING THE DEFAULT SUPPLIER TO DEVELOP A PROCUREMENT PLAN; ESTABLISHING REQUIREMENTS FOR COMMENT BY THE PUBLIC AND THE COMMISSION ON A DEFAULT SUPPLIER PROCUREMENT PLAN; PROVIDING A PROCESS FOR DEFAULT SUPPLY PROCUREMENT FILINGS AND COMMISSION APPROVAL; REQUIRING THE COMMISSION TO ESTABLISH AN ELECTRICITY COST RECOVERY MECHANISM FOR PRUDENTLY INCURRED ELECTRICITY SUPPLY COSTS; REQUIRING THE COMMISSION TO REQUIRE THE DEFAULT SUPPLIER TO OFFER MULTIPLE SERVICE OPTIONS; REQUIRING THE DEFAULT

SUPPLIER TO OFFER ITS CUSTOMERS THE OPTION OF PURCHASING A PRODUCT COMPOSED OF CERTIFIED ENVIRONMENTALLY PREFERRED RESOURCES; AMENDING SECTIONS 69-1-114 AND 69-8-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . 2069

510 *(Senate Bill No. 275; Laible)* GENERALLY REVISING LAWS FOR THE COLLECTION OF JUDGMENTS AND FINES; REQUIRING THAT COLLECTION FEES BE ADDED TO THE AMOUNT OF THE JUDGMENT OR FINE BEING COLLECTED; INCREASING THE LENGTH OF A JUDGMENT LIEN FILED IN ANOTHER COUNTY AND A JUDGMENT LIEN RENDERED IN FEDERAL COURT FROM 6 YEARS TO 10 YEARS; REQUIRING EARNINGS WITHHELD FROM A JUDGMENT DEBTOR TO BE REMITTED TO THE SHERIFF OR LEVYING OFFICER WITHIN 5 DAYS OF THE DAY THE EARNINGS ARE WITHHELD; PROVIDING THAT FEES ASSESSED IN A MUNICIPAL COURT MAY NOT EXCEED THOSE FEES ASSESSED BY A JUSTICE'S COURT; EXPANDING THE LIABILITY FOR ISSUING A BAD CHECK TO INCLUDE A CONVERTED CHECK AND AN ELECTRONIC FUND TRANSFER; PROVIDING THAT MONEY PAID UNDER TITLE 53 TO PROVIDERS OF GOODS AND SERVICES IS NOT EXEMPT FROM LEVY OR OTHER LEGAL PROCEEDINGS; AND AMENDING SECTIONS 3-10-601, 25-9-302, 25-9-303, 25-13-402, 25-30-102, 27-1-717, 46-17-303, 46-19-102, AND 53-2-607, MCA 2073

511 *(Senate Bill No. 294; Gebhardt)* REVISING THE INTEREST RATE APPLIED TO THE REFUND OF PROPERTY TAXES OR FEES PAID UNDER PROTEST; PROVIDING THAT THE STATE SHARE OF PROTESTED PROPERTY TAXES OF CENTRALLY ASSESSED PROPERTY MUST BE REMITTED TO THE STATE TREASURER; PROVIDING THAT A GOVERNING BODY OF A TAXING JURISDICTION MAY ACCESS PROTESTED PROPERTY TAXES OF CENTRALLY ASSESSED PROPERTY; REQUIRING THE STATE TREASURER TO REFUND THE STATE SHARE OF PROTESTED PROPERTY TAXES OF CENTRALLY ASSESSED PROPERTY; AMENDING SECTION 15-1-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2079

512 *(Senate Bill No. 344; Laible)* REDUCING THE MINIMUM NONFORFEITURE AMOUNT TO 1.5 PERCENT A YEAR INTEREST FROM 3 PERCENT A YEAR INTEREST WITH RESPECT TO CERTAIN ANNUITY CONTRACTS PROVIDING FOR FLEXIBLE CONSIDERATIONS; AMENDING SECTION 33-20-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 2082

513 *(Senate Bill No. 348; Keenan)* AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT WITH AND REGULATE BEHAVIORAL HEALTH INPATIENT FACILITIES; ALLOWING THE MONTANA STATE HOSPITAL TO DIRECT THAT A PERSON WITH MENTAL DISORDERS WHO HAS BEEN INVOLUNTARILY COMMITTED TO THE STATE HOSPITAL BE TRANSFERRED TO A BEHAVIORAL HEALTH INPATIENT FACILITY WHEN A BED IS AVAILABLE; REVISING HEARING PROVISIONS FOR EXTENSION OF A COMMITMENT; PERMITTING A COUNTY ATTORNEY TO HAVE A PERSON WHO APPEARS TO HAVE A MENTAL DISORDER AND IS IN IMMINENT DANGER OF DEATH OR BODILY HARM TRANSPORTED TO A BEHAVIORAL HEALTH INPATIENT FACILITY IF A BED IS AVAILABLE; PERMITTING TRANSFER OF PERSONS SUFFERING FROM MENTAL DISORDERS TO BE

DIVERTED FROM DETENTION CENTERS TO BEHAVIORAL HEALTH INPATIENT FACILITIES IF A BED IS AVAILABLE; AMENDING SECTIONS 53-21-102, 53-21-120, 53-21-127, 53-21-128, 53-21-129, AND 53-21-138, MCA; AND PROVIDING AN EFFECTIVE DATE 2083

514 *(Senate Bill No. 386; Gebhardt)* ELIMINATING THE APPLICABILITY OF THE MONTANA MAJOR FACILITY SITING ACT TO CERTAIN PIPELINES AND ASSOCIATED FACILITIES; AMENDING SECTION 17, CHAPTER 293, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2091

515 *(Senate Bill No. 387; Cobb)* CONFORMING THE RETAIL TELECOMMUNICATIONS EXCISE TAX TO THE FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT OF 2000 AND AN AGREEMENT AMONG STATES FOR SOURCING OF OTHER TELECOMMUNICATIONS SERVICES; AMENDING SECTIONS 15-53-129 AND 15-53-130, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE 2092

516 *(Senate Bill No. 402; Cocchiarella)* CREATING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT; PROVIDING DEFINITIONS; ESTABLISHING LICENSING REQUIREMENTS; REQUIRING RECORD RETENTION, SURETY BONDS, AND THE MAINTENANCE OF TRUST ACCOUNTS; PROHIBITING CERTAIN ACTIVITIES AND PROVIDING PENALTIES; AUTHORIZING RULEMAKING BY THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR SUSPENSION, REVOCATION, AND REINSTATEMENT OF LICENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2096

517 *(Senate Bill No. 434; Tropila)* EXTENDING IMMUNITY TO PRIVATE RESPONSE TEAMS CONTRACTED BY THE STATE, A POLITICAL SUBDIVISION OF THE STATE, OR A LOCAL OR TRIBAL EMERGENCY RESPONSE AUTHORITY RESPONDING TO A HAZARDOUS MATERIAL INCIDENT; REMOVING GOVERNMENTAL IMMUNITY FOR BAD FAITH; AMENDING SECTION 10-3-1217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2106

518 *(Senate Bill No. 454; Story)* REVISING THE SCHEDULE OF BLOCK GRANTS FOR COUNTYWIDE SCHOOL RETIREMENT AND COUNTYWIDE SCHOOL TRANSPORTATION AS ESTABLISHED BY CHAPTER 574, LAWS OF 2001, AND MODIFIED BY CHAPTER 13, SPECIAL LAWS OF AUGUST 2002; AMENDING SECTIONS 26 AND 27, CHAPTER 13, SPECIAL LAWS OF AUGUST 2002; AND PROVIDING AN EFFECTIVE DATE 2107

519 *(Senate Bill No. 480; Black)* CLARIFYING THAT DIVIDEND INCOME IS INCLUDED IN MONTANA ADJUSTED GROSS INCOME REGARDLESS OF WHETHER DIVIDEND INCOME IS INCLUDED IN FEDERAL ADJUSTED GROSS INCOME; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2110

520 *(House Bill No. 277; Lindeen)* SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IV, SECTION 8, OF THE MONTANA CONSTITUTION TO EXTEND TERM LIMITS FOR LEGISLATORS FOR AN ADDITIONAL 4 YEARS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2117

521 *(House Bill No. 721; Erickson)* REVISING THE LAWS RELATING TO WATER'S-EDGE ELECTIONS FOR CORPORATE INCOME TAX PURPOSES; INCLUDING TAXABLE INCOME SHIFTED TO A TAX

	HAVEN IN THE APPORTIONMENT OF INCOME FOR THE PURPOSES OF A WATER'S-EDGE ELECTION; IDENTIFYING TAX HAVENS; PROVIDING THAT A PORTION OF THE TAX COLLECTIONS FROM WATER'S-EDGE CORPORATIONS BE ALLOCATED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR FISCAL YEAR 2005; AMENDING SECTIONS 15-1-501, 15-31-121, 15-31-322, 15-31-323, 15-31-324, AND 15-31-326, MCA; AND PROVIDING AN APPLICABILITY DATE.	2118
522	<i>(House Bill No. 748; Devlin)</i> CLARIFYING AND REVISING THE LAWS RELATING TO THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES; CHANGING THE METHOD FOR DISTRIBUTING OIL AND NATURAL GAS PRODUCTION TAXES TO STATE FUNDS AND TO LOCAL TAXING UNITS; ESTABLISHING PERCENTAGE DISTRIBUTION AMOUNTS FOR LOCAL TAXING UNITS; PROVIDING A STATUTORY APPROPRIATION FOR THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES TO LOCAL TAXING UNITS; AMENDING SECTIONS 7-1-2111, 15-1-501, 15-36-304, 15-36-314, 15-36-315, 15-38-113, 15-38-202, 17-7-502, 75-10-743, 76-15-904, 82-11-135, 85-2-905, AND 90-2-1104, MCA; REPEALING SECTIONS 15-36-320 AND 15-36-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	2121
523	<i>(Senate Bill No. 46; Gebhardt)</i> REMOVING THE REQUIREMENT THAT A COUNTY MUST ENTER INTO A CONTRACT FOR CERTAIN LARGE PURCHASES OR CONSTRUCTION CONTRACTS; AMENDING SECTION 7-5-2301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	2141
524	<i>(Senate Bill No. 138; Cobb)</i> REVISING THE LAWS RELATING TO ALTERNATIVE ENERGY AND ENERGY CONSERVATION TAX POLICY; PROVIDING THAT GENERATION FACILITIES THAT HAVE 1 MEGAWATT OR GREATER CAPACITY POWERED BY AN ALTERNATIVE RENEWABLE ENERGY SOURCE ARE NOT EXEMPT FROM PROPERTY TAXES UNDER THE GENERAL PROPERTY TAX EXEMPTION LAWS BUT CONTINUE TO BE SUBJECT TO NEW AND EXPANDING INDUSTRY PROPERTY TAX INCENTIVES; REVISING THE DEDUCTION FOR ENERGY-CONSERVATION INVESTMENTS AND THE CREDITS FOR ENERGY-CONSERVING EXPENDITURES BY ELIMINATING THE TAX SAVING CEILING FOR THE DEDUCTION AND THE CARRYFORWARD PROVISION OF THE CREDIT; PROVIDING THAT PROPERTY PURCHASED UNDER THE COMMERCIAL OR NET METERING SYSTEM INVESTMENT CREDIT DOES NOT HAVE TO QUALIFY AS SPECIAL DEPRECIABLE PROPERTY UNDER THE INTERNAL REVENUE CODE OF 1954; AMENDING SECTIONS 15-6-225, 15-32-104, 15-32-109, AND 15-32-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	2141
525	<i>(Senate Bill No. 320; Tester)</i> ALLOWING A MUNICIPALITY TO ADJUST BASE TAXABLE VALUE IN CERTAIN CASES OF TAX INCREMENT FINANCING FOR WHICH NO BONDS WERE ISSUED; AMENDING SECTION 7-15-4293, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.	2143
526	<i>(Senate Bill No. 384; Mangan)</i> ALLOWING A CITY OR TOWN TO EXTEND, RENEW, OR AMEND AN AGREEMENT FOR THE SUPERVISION OR OPERATION OF A PHYSICAL PLANT THAT PROVIDES WATER, SEWER, OR POWER SERVICES TO THE MUNICIPALITY WITHOUT PROCEEDING UNDER PUBLIC BIDDING	

MONTANA SESSION LAWS 2003

xc

PROCEDURES IN CERTAIN INSTANCES; AND AMENDING SECTION 7-5-4301, MCA 2144

527 *(Senate Bill No. 399; Bohlinger)* ALLOWING A MUNICIPALITY OR COUNTY TO REQUEST THAT THE UNITED STATES DEPARTMENT OF TRANSPORTATION ESTABLISH RAILROAD CROSSING QUIET ZONES THROUGH WHICH LOCOMOTIVE HORNS AND BELLS ARE NOT ROUTINELY SOUNDED; REQUIRING THE MUNICIPALITY OR COUNTY TO DESCRIBE HOW REQUIRED SUPPLEMENTAL SAFETY MEASURES WILL BE IMPLEMENTED AT THOSE CROSSINGS; PROVIDING THAT A QUIET ZONE MAY NOT BE ESTABLISHED UNLESS CERTAIN PROCEDURES ARE FOLLOWED; ALLOWING A RAILROAD COMPANY TO PERMIT ITS TRAINS TO PASS THROUGH DESIGNATED QUIET ZONES WITHOUT SOUNDING THEIR HORNS AND BELLS; EXEMPTING A RAILROAD COMPANY AND EMPLOYEES FROM LIABILITY; AMENDING SECTIONS 61-8-347, 69-14-562, AND 69-14-610, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2145

528 *(Senate Bill No. 464; Keenan)* REVISING LAWS GOVERNING FOOD ESTABLISHMENTS; REVISING FOOD ESTABLISHMENT LICENSURE FEES; PROVIDING FOR LICENSURE OF FOOD ESTABLISHMENTS OPERATED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE UNLESS THEY EMPLOY A FULL-TIME SANITARIAN; REQUIRING ANNUAL INSPECTIONS; ALLOWING INSPECTIONS MORE THAN ONCE A YEAR; REQUIRING TRAINING FOR INSPECTORS; AMENDING SECTIONS 50-50-102, 50-50-103, 50-50-202, 50-50-205, AND 50-50-301, MCA; AND PROVIDING DELAYED EFFECTIVE DATES AND A TERMINATION DATE 2147

529 *(Senate Bill No. 478; Story)* CHANGING THE WAY THAT A POLITICAL SUBDIVISION MAY EXEMPT A PROPERTY TAX MILL LEVY FOR PREMIUM CONTRIBUTIONS FOR GROUP BENEFITS FROM THE PROPERTY TAX LIMITATION LAW; CHANGING THE OPERATIVE DATES; PROVIDING THAT THE HEARING ON THE EXEMPTION MUST COMPLY WITH NOTICE AND HEARING REQUIREMENTS; REQUIRING THAT THE EXEMPT MILL LEVY OR DOLLAR AMOUNT BE LISTED SEPARATELY ON THE PROPERTY TAX NOTICE; AMENDING SECTIONS 2-9-212 AND 2-18-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2152

530 *(House Bill No. 283; Fuchs)* DIRECTING THE ATTORNEY GENERAL TO PREPARE A PROACTIVE OPINION OF STATE OPTIONS REGARDING DELISTING AND POSSIBLE LITIGATION SCENARIOS RELATED TO RECOVERY OF DAMAGES AND COSTS ASSOCIATED WITH WOLF REINTRODUCTION IN MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2154

531 *(House Bill No. 722; Clark)* IMPOSING A UTILIZATION FEE ON RESIDENT BED DAYS OF INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT THE FEE AND DEPOSIT 70 PERCENT OF THE FEE IN A STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PURPOSE OF FINANCING, ADMINISTERING, AND PROVIDING HEALTH AND HUMAN SERVICES; PROVIDING FOR THE DEPOSIT OF THE REMAINDER OF THE FEE IN THE STATE GENERAL FUND; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2154

TITLE CONTENTS

532 *(House Bill No. 743; Clark)* INCLUDING BED DAYS AT THE MONTANA MENTAL HEALTH NURSING CARE CENTER IN THE NURSING FACILITY UTILIZATION FEE; PROVIDING FOR THE DISPOSITION OF UTILIZATION FEES FROM THE MONTANA MENTAL HEALTH NURSING CARE CENTER; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-60-101 AND 15-60-210, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION 2160

533 *(House Bill No. 767; Brueggeman)* GENERALLY REVISING MOTOR VEHICLE AND DRIVING RECORD LAWS; PROVIDING FOR SPECIAL MOTORCYCLE LICENSE PLATES; ESTABLISHING A FEE FOR THE SPECIAL MOTORCYCLE LICENSE PLATES AND REQUIRING THAT THE PROCEEDS BE USED FOR GRANTS TO NONPROFIT ORGANIZATIONS IDENTIFIED IN RULES ADOPTED BY THE DEPARTMENT OF JUSTICE; STATUTORILY APPROPRIATING THE FEE PROCEEDS TO THE DEPARTMENT OF JUSTICE; REVISING LAWS GOVERNING THE RELEASE OF INFORMATION FROM DRIVING RECORDS BY THE DEPARTMENT OF JUSTICE, THE KIND OF INFORMATION THAT MAY BE RELEASED, AND THE FEES THAT MAY BE CHARGED; AMENDING SECTIONS 17-7-502, 61-11-105, 61-11-503, 61-11-509, AND 61-11-510, MCA; AND PROVIDING EFFECTIVE DATES. 2162

534 *(Senate Bill No. 112; McCarthy)* ASSISTING IN THE FUNDING OF MONTANA SEARCH AND RESCUE OPERATIONS; ASSESSING A SURCHARGE ON CERTAIN LICENSES AND DIRECTING THAT SURCHARGE PROCEEDS BE SPENT FOR COUNTY SEARCH AND RESCUE OPERATIONS AND TRAINING AND AS MATCHING FUNDS FOR THE PURCHASE OF EQUIPMENT BY LOCAL SEARCH AND RESCUE UNITS; CREATING A SEARCH AND RESCUE ACCOUNT, TO BE ADMINISTERED BY THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS, TO ASSIST IN FUNDING SEARCH AND RESCUE OPERATIONS; AMENDING SECTIONS 15-1-122, 23-2-517, 23-2-615, 23-2-616, 23-2-803, 87-1-601, AND 87-2-202, MCA; AND PROVIDING DELAYED EFFECTIVE DATES 2167

535 *(Senate Bill No. 414; Pease)* PROVIDING AN EXTENDED SCHEDULE FOR APPLICANTS TO COMPLY WITH THE INCENTIVE PROGRAM FOR PRODUCTION OF GASOHOL; AMENDING SECTION 15-70-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2177

536 *(Senate Bill No. 442; Stonington)* PROVIDING FOR THE REGULATION OF EXOTIC WILDLIFE; PROVIDING THAT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS MAY ISSUE PERMITS FOR AUTHORIZING THE POSSESSION OR SALE OF CONTROLLED EXOTIC WILDLIFE AND CHARGE A REASONABLE FEE FOR THE PERMIT; PROVIDING FOR LISTS OF NONCONTROLLED, CONTROLLED, AND PROHIBITED EXOTIC WILDLIFE; ESTABLISHING A CLASSIFICATION REVIEW COMMITTEE TO ADVISE THE FISH, WILDLIFE, AND PARKS COMMISSION REGARDING THE IMPORTATION, POSSESSION, AND SALE OF EXOTIC WILDLIFE; PROVIDING EXCEPTIONS AND EXEMPTIONS FROM THE REGULATION OF EXOTIC WILDLIFE; PROVIDING AN AMNESTY PROGRAM FOR EXOTIC WILDLIFE POSSESSED AS OF JANUARY 1, 2004; AMENDING SECTIONS 87-5-701, 87-5-702, 87-5-704, 87-5-712, AND 87-5-716, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2179

537 *(Senate Bill No. 446; Barkus)* TEMPORARILY TRANSFERRING THE FLATHEAD BASIN COMMISSION FROM THE GOVERNOR'S OFFICE TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR ADMINISTRATIVE PURPOSES; AMENDING SECTION 2-15-213, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2186

538 *(Senate Bill No. 489; Elliott)* DESIGNATING U.S. INTERSTATE HIGHWAYS IN MONTANA AS THE "PURPLE HEART TRAIL"; AND AMENDING SECTION 60-2-242, MCA. 2187

539 *(Senate Bill No. 491; Stonington)* AUTHORIZING THE USE OF THE RESEARCH AND COMMERCIALIZATION ACCOUNT FOR THE PAYMENT OF THE ADMINISTRATIVE COSTS INCURRED BY THE BOARD OF RESEARCH AND COMMERCIALIZATION TECHNOLOGY IN ADMINISTERING RESEARCH AND COMMERCIALIZATION PROJECTS; AMENDING SECTIONS 90-3-1001, 90-3-1002, AND 90-3-1003, MCA; AND PROVIDING AN EFFECTIVE DATE 2188

540 *(House Bill No. 259; Maedje)* INCREASING THE SPEED LIMIT TO 70 MILES AN HOUR ON U.S. HIGHWAY 93 BETWEEN THE CANADIAN BORDER AND REFERENCE MARKER 133 NORTHWEST OF WHITEFISH; AMENDING SECTION 61-8-303, MCA; AND PROVIDING AN EFFECTIVE DATE 2190

541 *(House Bill No. 705; Clark)* INCREASING THE UTILIZATION FEE ON NURSING FACILITY BED DAYS; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR FUNDING INCREASES IN MEDICAID PAYMENTS; PROVIDING AN APPROPRIATION; AMENDING SECTION 15-60-102, MCA; AND PROVIDING AN EFFECTIVE DATE 2191

542 *(Senate Bill No. 101; Mahlum)* ALLOWING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION TO USE THE SERVICES OF VOLUNTEERS; REQUIRING WORKERS' COMPENSATION COVERAGE FOR THE VOLUNTEERS; AUTHORIZING REIMBURSEMENT OF CERTAIN EXPENSES OF THE VOLUNTEERS; AUTHORIZING THE COMMISSION TO SELL REAL AND PERSONAL PROPERTY; AUTHORIZING THE COMMISSION TO ESTABLISH TRUST FUNDS; AUTHORIZING THE COMMISSION TO OBTAIN FEDERAL MONEY AND REQUIRING THE DEPOSIT OF THE FEDERAL MONEY INTO THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT; REQUIRING THE COMMISSION TO ESTABLISH A SUBCOMMITTEE OF COMMISSION MEMBERS AND MEMBERS OF THE MONTANA HISTORICAL SOCIETY BOARD; REQUIRING A MAJORITY VOTE OF THE SUBCOMMITTEE PRIOR TO SELLING PERSONAL PROPERTY FROM THE BOVEY ASSETS; REQUIRING THAT FUNDS RECEIVED FROM THE SALE OF PERSONAL PROPERTY FROM THE BOVEY ASSETS BE DEPOSITED IN A TRUST FUND; TRANSFERRING TITLE OF THE BOVEY ASSETS TO THE STATE OF MONTANA; AMENDING SECTIONS 22-3-1003 AND 22-3-1004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2193

543 *(Senate Bill No. 325; McGee)* REVISING THE RESTRICTIONS ON SUBDIVISION ACTIVITIES UNDER THE SANITATION IN SUBDIVISIONS LAWS; AMENDING SECTION 76-4-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2196

544 *(Senate Bill No. 407; DePratu)* CREATING THE MONTANA ECONOMIC DEVELOPMENT TAX ACT; PROVIDING FOR A LIMITED SALES TAX AND USE TAX ON CERTAIN PROPERTY AND SERVICES; REDUCING

INDIVIDUAL INCOME TAX RATES; ESTABLISHING A CAPITAL GAINS CREDIT; PROVIDING FOR COLLECTION OF THE LIMITED SALES TAX AND USE TAX; PROVIDING FOR DISTRIBUTION OF THE LIMITED SALES TAX AND USE TAX REVENUE; CLARIFYING THE DEFINITION OF "CONSUMER PRICE INDEX" RELATING TO INDIVIDUAL INCOME TAX PROVISIONS; AMENDING INDIVIDUAL INCOME TAX EXEMPTIONS; LIMITING THE INDIVIDUAL INCOME TAX DEDUCTION FOR FEDERAL INCOME TAX PAID; AMENDING THE INDIVIDUAL INCOME TAX STANDARD DEDUCTION; ALLOWING RESIDENTS A CREDIT AGAINST INDIVIDUAL INCOME TAXES FOR THEIR SHARE OF TAXES IMPOSED AND PAID TO ANOTHER STATE OR COUNTRY BY A PARTNERSHIP OF WHICH THE RESIDENT IS A PARTNER; INCREASING THE CIGARETTE TAX FROM 18 CENTS TO 70 CENTS ON A PACK OF CIGARETTES AND REVISING THE DISTRIBUTION OF THE CIGARETTE TAX; ADJUSTING THE CIGARETTE INSIGNIA DISCOUNTS; INCREASING THE TAX ON TOBACCO PRODUCTS FROM 12.5 PERCENT TO 25 PERCENT; PROVIDING FOR A TAX ON EACH OUNCE OF MOIST SNUFF; ADJUSTING THE WHOLESALER'S DISCOUNT FOR TOBACCO PRODUCTS; AMENDING SECTIONS 13-37-218, 15-30-101, 15-30-103, 15-30-112, 15-30-121, 15-30-122, 15-30-124, 15-30-142, 16-11-111, 16-11-114, 16-11-119, 16-11-201, 16-11-202, AND 16-11-206, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES . . . 2196

545 (*Senate Bill No. 408; Nelson*) PROVIDING AN ADJUSTMENT TO ADJUSTED GROSS INCOME FOR STATE INCOME TAX PURPOSES FOR LICENSED HEALTH CARE PROFESSIONALS WHO RECEIVE A LOAN REPAYMENT INCENTIVE TO PRACTICE IN CERTAIN AREAS IN MONTANA; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2226

546 (*Senate Bill No. 429; Esp*) GENERALLY REVISING THE PROVISIONS REGARDING REDISTRICTING; PROVIDING FOR CRITERIA; PROVIDING FOR THE USE OF DECENNIAL CENSUS DATA; PROVIDING FOR THE IMPLEMENTATION OF A SUCCESSFUL CONSTITUTIONAL AMENDMENT TO REVISE LEGISLATIVE REDISTRICTING TO CREATE A NONPARTISAN PROCESS TO ALLOW THE LEGISLATURE OPPORTUNITIES TO APPROVE A PLAN; PROVIDING THAT IF A PLAN IS NOT APPROVED, A THREE-JUDGE PANEL APPOINTED BY THE SUPREME COURT SHALL APPROVE A PLAN; PROVIDING FOR A REDISTRICTING PLAN UPON ORDER BY THE COURT; AMENDING SECTION 1, CHAPTER 4, LAWS OF 2003, AND SECTIONS 5-1-101, 5-1-102, 5-1-106, 5-1-108, 5-1-109, AND 5-1-111, MCA; REPEALING SECTION 5-1-110, MCA; CONTINGENTLY REPEALING CHAPTER 3, LAWS OF 2003; AND PROVIDING AN APPLICABILITY DATE 2233

547 (*Senate Bill No. 492; Johnson*) CLARIFYING THAT THE BOARD OF REGENTS, ON BEHALF OF THE UNIVERSITY SYSTEM UNITS, MUST APPROVE AN OPERATING BUDGET CONTAINING DETAILED REVENUE AND EXPENDITURES OF ALL MONEY APPROPRIATED IN THE GENERAL APPROPRIATIONS ACT; PROVIDING THAT TRANSFERS BETWEEN UNITS MAY BE MADE ONLY WITH THE APPROVAL OF THE BOARD OF REGENTS AFTER APPROVAL OF THE OPERATING BUDGET; REQUIRING THAT TRANSFERS BE SUBMITTED TO THE OFFICE OF BUDGET AND PROGRAM PLANNING AND THE LEGISLATIVE FISCAL ANALYST; AMENDING SECTION 17-7-138, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 2237

MONTANA SESSION LAWS 2003

xciv

- 548 *(House Bill No. 736; Brown)* ESTABLISHING A K-12 PUBLIC SCHOOL RENEWAL COMMISSION; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2239
- 549 *(Senate Bill No. 406; McGee)* PROVIDING THAT A CORNER RECORD MAY BE FILED IN LIEU OF A CERTIFICATE OF SURVEY IN CERTAIN INSTANCES; REQUIRING THAT THE COUNTY CLERK PROVIDE AN INDEX; PROVIDING THAT PARCELS CREATED FOR RIGHTS-OF-WAY OR UTILITY SITES ARE EXEMPT FROM THE SUBDIVISION REVIEW PROCESS UNLESS THERE IS A SUBSEQUENT CHANGE IN LAND USE; PROVIDING GUIDANCE ON EXEMPTIONS THAT ARE CREATED TO PROVIDE SECURITY FOR MORTGAGES, LIENS, OR TRUST INDENTURES; AND AMENDING SECTIONS 70-22-105, 70-22-109, 76-3-201, AND 76-3-404, MCA. 2241
- 550 *(Senate Bill No. 424; Nelson)* GENERALLY REVISING SCHOOL FINANCE; PROVIDING FOR ANNUAL INFLATION-RELATED ADJUSTMENTS TO THE BASE FUNDING PROGRAM AMOUNTS FOR SCHOOL DISTRICT BASIC ENTITLEMENTS AND PER-ANB ENTITLEMENTS; INCREASING THE BASIC AND PER-ANB ENTITLEMENTS FOR PUBLIC SCHOOLS FOR SCHOOL FISCAL YEAR 2004 AND SUCCEEDING YEARS; INCREASING SCHOOL FACILITY ENTITLEMENTS; DEFINING "FACILITY GUARANTEED MILL VALUE PER ANB"; CHANGING THE WAY IN WHICH A SCHOOL DISTRICT OR COOPERATIVE CHARGES EMPLOYER CONTRIBUTIONS FOR RETIREMENT, SOCIAL SECURITY, AND UNEMPLOYMENT INSURANCE; TERMINATING THE COUNTYWIDE SCHOOL RETIREMENT BLOCK GRANTS; REVISING THE SCHEDULE FOR STATE AND COUNTY TRANSPORTATION REIMBURSEMENT; ELIMINATING WEIGHTED RIDERSHIP; ESTABLISHING THREE SEPARATE BLOCK GRANTS; ALLOWING THE COMBINED FUND BLOCK GRANT TO BE DEPOSITED IN ANY BUDGETED FUND OF THE DISTRICT; AMENDING SECTIONS 20-9-306, 20-9-366, 20-9-370, 20-9-371, 20-9-501, 20-9-542, 20-10-101, AND 20-10-141, MCA; AMENDING SECTIONS 25 AND 26, CHAPTER 13, LAWS OF 2002; REPEALING SECTIONS 20-10-127 AND 20-10-128, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE 2243
- 551 *(Senate Bill No. 473; Elliott)* PROVIDING FOR A PRESCRIPTION DRUG EXPANSION PROGRAM UNDER MEDICAID; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO IMPLEMENT THE PRESCRIPTION DRUG EXPANSION PROGRAM UNDER MEDICAID; PROVIDING AN ANNUAL APPLICATION FEE FOR THE PROGRAM; AUTHORIZING A LOAN FROM THE BOARD OF INVESTMENTS FOR THE STARTUP COST OF THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2257
- 552 *(House Bill No. 13; Lewis)* PROVIDING FOR PAY AND BENEFITS FOR STATE EMPLOYEES IN THE STATEWIDE, TEACHERS', AND BLUE-COLLAR PAY PLANS; PROVIDING SALARY INCREASES; FREEZING THE STATEWIDE PAY SCHEDULE; INCREASING THE EMPLOYER CONTRIBUTION TO THE EMPLOYEE GROUP BENEFITS PROGRAMS; APPROPRIATING FUNDS FOR THE INCREASES AND FOR A PERSONAL SERVICES CONTINGENCY POOL; AMENDING SECTIONS 2-18-301, 2-18-303, 2-18-312, 2-18-313, 2-18-315, AND 2-18-703, MCA; AND PROVIDING AN EFFECTIVE DATE. 2260
- 553 *(House Bill No. 42; Barrett)* REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CALCULATE THE AMOUNT OF HABITAT AVAILABLE FOR ELK, DEER, AND ANTELOPE IN MONTANA;

TITLECONTENTS

REQUIRING A DETERMINATION OF SUSTAINABLE POPULATIONS BASED ON THE HABITAT CALCULATION; REQUIRING THE DEPARTMENT TO MANAGE WITH THE OBJECTIVE THAT POPULATIONS OF ELK, DEER, AND ANTELOPE ARE AT OR BELOW THE POPULATION ESTIMATE; PROVIDING A FUNDING SOURCE; PROVIDING FOR ADJUSTMENTS BASED ON MANAGEMENT PROVISIONS IN THE MAXIMUM LICENSE NUMBERS THAT CAN BE ALLOCATED FOR RESIDENTS; AMENDING SECTIONS 87-1-201, 87-1-301, 87-2-104, 87-2-501, AND 87-2-513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2271

554 *(House Bill No. 56; Thomas)* PROVIDING FOR INVOLUNTARY COMMITMENT TO THE MONTANA MENTAL HEALTH NURSING CARE CENTER; PROVIDING FOR DIRECT ADMISSION TO THE MONTANA MENTAL HEALTH NURSING CARE CENTER UNDER CERTAIN CONDITIONS; AND AMENDING SECTIONS 53-21-127, 53-21-128, AND 53-21-414, MCA 2280

555 *(House Bill No. 90; Clark)* AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE VOLUNTARY PROTECTIVE SERVICES TO PARENTS OF CHILDREN ALLEGED TO HAVE BEEN ABUSED OR NEGLECTED; DEFINING THE TERM "PROTECTIVE SERVICES"; PROVIDING FOR DISMISSAL OF ABUSE AND NEGLECT PETITIONS UPON SUCCESSFUL REUNIFICATION OF A CHILD WITH THE CHILD'S PARENTS; AND AMENDING SECTIONS 41-3-102, 41-3-202, 41-3-301, 41-3-302, AND 41-3-423, MCA 2283

556 *(House Bill No. 197; Becker)* GENERALLY REVISING LAWS RELATING TO REVOCATIONS, SUSPENSIONS, AND RECORDKEEPING OF DRIVER'S LICENSES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF JUSTICE ESTABLISH BY ADMINISTRATIVE RULE A DRIVER REHABILITATION AND IMPROVEMENT PROGRAM THAT INCLUDES A REQUIREMENT TO CONTRACT WITH PRIVATE ENTITIES FOR THE OPERATION OF PROGRAM COURSES; CLARIFYING THE REQUIREMENTS FOR OBTAINING AND USING A DRIVING RECORD FROM ANOTHER JURISDICTION FOR A PERSON APPLYING FOR A MONTANA DRIVER'S LICENSE; REVISING REQUIREMENTS FOR THE SUSPENSION AND REVOCATION OF A DRIVER'S LICENSE FOR CONVICTIONS OF CERTAIN OFFENSES AND BREATH TESTING REFUSALS; REVISING AUTHORITY TO IMPOSE A DISCRETIONARY LICENSE SUSPENSION; REVISING THE REQUIREMENT FOR SUSPENDING A LICENSE FOR A CONVICTION OF DRIVING WHILE A LICENSE IS SUSPENDED OR REVOKED; REMOVING THE REQUIREMENT THAT THE DEPARTMENT SUSPEND THE DRIVER'S LICENSE OF A PERSON WHO FAILS TO COMPLY WITH CERTAIN DRIVER REHABILITATION AND IMPROVEMENT COURSE REQUIREMENTS; REMOVING THE DEFINITION OF "DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT"; PROVIDING FOR A DISCOUNT ON LICENSE REINSTATEMENT FEES UPON COMPLETION OF A DRIVER REHABILITATION PROGRAM; AMENDING SECTIONS 61-2-302, 61-5-107, 61-5-205, 61-5-206, 61-5-208, 61-5-212, 61-7-103, 61-8-402, 61-8-409, 61-8-734, 61-11-203, 61-11-204, AND 61-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2291

557 *(House Bill No. 201; Jent)* GENERALLY REVISING VOTER REGISTRATION AND ABSENTEE BALLOT PROVISIONS FOR ELECTORS ABSENT FROM THE POLLING PLACE ON ELECTION DAY; ESTABLISHING THE MONTANA ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTOR VOTING ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE FEDERAL UNIFORMED AND

OVERSEAS CITIZENS ABSENTEE VOTING ACT AND THE FEDERAL HELP AMERICA VOTE ACT OF 2002; PROVIDING DEFINITIONS; DESIGNATING THE SECRETARY OF STATE AS THE SINGLE POINT OF CONTACT FOR INFORMATION ABOUT ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTORS AND REQUIRING A REPORT ON ABSENTEE BALLOTS FOR THOSE ELECTORS; AUTHORIZING ABSENT UNIFORMED SERVICES ELECTORS NOT OVERSEAS TO USE THE FEDERAL WRITE-IN ABSENTEE BALLOT FOR REGISTRATION AND APPLICATION FOR ABSENTEE BALLOTS; PROVIDING THAT THE ABSENTEE BALLOT APPLICATION OF CERTAIN ELECTORS MUST APPLY TO CERTAIN FUTURE ELECTIONS; REVISING THE TIME PERIOD DURING WHICH ANY ELECTOR MAY APPLY FOR AN ABSENTEE BALLOT; REQUIRING THAT ANY APPLICATION FOR AN ABSENTEE BALLOT INCLUDE THE ELECTOR'S BIRTH DATE; PROVIDING THAT IF AN APPLICATION BY CERTAIN ELECTORS IS REJECTED, THE ELECTORS MUST BE NOTIFIED OF THE REASON; CLARIFYING THE PROCEDURE FOR CASTING AND COUNTING THE FEDERAL WRITE-IN ABSENTEE BALLOT; AMENDING SECTIONS 13-2-212, 13-2-214, 13-2-215, 13-13-211, 13-13-212, 13-13-213, 13-13-214, 13-13-229, 13-13-271, 13-13-272, 13-13-273, 13-13-277, AND 13-13-278, MCA; AND REPEALING SECTIONS 13-2-211 AND 13-13-276, MCA.

2308

558 (House Bill No. 206; Younkin) INCREASING AND CHANGING THE DISPOSITION OF FEES FOR DRIVER'S LICENSES AND DUPLICATE LICENSES; REQUIRING A BIENNIAL REPORT TO THE LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTIONS 61-5-111, 61-5-114, AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

2317

559 (House Bill No. 211; Newman) GENERALLY REVISING THE LAWS RELATING TO ELIGIBILITY OF PRISONERS FOR PARDON AND PAROLE AND RELATING TO THE BOARD OF PARDONS AND PAROLE; ADDING TWO AUXILIARY BOARD MEMBERS; AUTHORIZING MULTIPLE BOARDS TO BE IMPANELED TO CONDUCT HEARINGS AROUND THE STATE AND TO MAKE PAROLE DECISIONS; AUTHORIZING THE BOARD TO ISSUE UP TO TWO 10-DAY FURLOUGHS; CLARIFYING FROM WHICH CORRECTIONAL FACILITIES AND PROGRAMS THE BOARD CAN GRANT PAROLE; REVISING THE CONDUCT OF HEARINGS; REQUIRING AN INTERIM REPORT ON DISPOSITION OF NATIVE AMERICAN PAROLE APPLICATIONS; AMENDING SECTIONS 2-15-2302, 46-23-103, 46-23-104, 46-23-109, 46-23-201, 46-23-202, 46-23-215, 46-23-216, 46-23-218, 46-23-1025, AND 46-24-212, MCA; REPEALING SECTION 46-23-107, MCA; AND PROVIDING EFFECTIVE DATES

2321

560 (House Bill No. 218; Bookout-Reinicke) REQUIRING THAT THE OWNER OF HIGH-LEVEL RADIOACTIVE WASTE OR TRANSURANIC WASTE PAY FEES, SUBMIT A SAFETY PLAN, AND OBTAIN A PERMIT BEFORE SHIPPING THE WASTE THROUGH MONTANA; DEFINING TERMS; CREATING THE RADIOACTIVE WASTE TRANSPORTATION MONITORING, EMERGENCY RESPONSE, AND TRAINING ACCOUNT IN THE STATE SPECIAL REVENUE FUND; SPECIFYING HOW MONEY IN THE ACCOUNT MUST BE USED; REQUIRING THAT INITIAL NOTICE OF SHIPMENTS BE PROVIDED TO THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS AND TO THE DEPARTMENT OF TRANSPORTATION; REQUIRING THAT THE DISASTER AND EMERGENCY SERVICES DIVISION NOTIFY CERTAIN OTHER AGENCIES AND PERSONS WHEN IT IS INFORMED THAT WASTE WILL BE ROUTED THROUGH MONTANA; PROVIDING

RESPONSIBILITIES FOR OWNERS; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO COLLECT THE FEES AND ISSUE PERMITS; REQUIRING INSPECTIONS; REQUIRING THAT THE PERMIT REMAIN WITH THE TRANSPORTER OF WASTE AS IT TRAVELS THROUGH THE STATE; REQUIRING THE HIGHWAY PATROL TO MONITOR OR ESCORT MOTOR CARRIERS THAT ARE CARRYING THE WASTE; PROVIDING FOR THE COORDINATION OF INSPECTIONS OF MOTOR CARRIERS; ALLOWING THE HIGHWAY PATROL TO BE REIMBURSED FOR COSTS INCURRED IN MONITORING OR ESCORTING THE MOTOR CARRIERS; SPECIFYING THAT THE PUBLIC SERVICE COMMISSION IS RESPONSIBLE FOR INSPECTING RAILS OR TRAINS THAT WILL BE INVOLVED IN CARRYING THE WASTE; PROVIDING CERTAIN RECOMMENDATIONS FOR TRANSPORT OF THE WASTE; ALLOWING THE PUBLIC SERVICE COMMISSION TO ENTER INTO RECIPROCAL AGREEMENTS WITH ADJACENT STATES AND CANADIAN PROVINCES FOR INSPECTION; REQUIRING THE PUBLIC SERVICE COMMISSION TO ESTABLISH RULES FOR CARRYING OUT THESE PROVISIONS; ASSIGNING LIABILITY; PROVIDING A PENALTY; AND PROVIDING A DELAYED EFFECTIVE DATE 2327

561 *(House Bill No. 247; Harris)* PROHIBITING LOCAL GOVERNMENTS FROM ENACTING ORDINANCES CONCERNING VAGRANCY; CLARIFYING THAT VAGRANCY DOES NOT INCLUDE AGGRESSIVE SOLICITATION THAT IS INCLUDED IN THE OFFENSE OF DISORDERLY CONDUCT; REMOVING EXISTING STATUTORY PROVISIONS CONCERNING VAGRANCY; AMENDING SECTIONS 7-1-111, 7-21-3322, 7-32-4304, AND 53-21-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2331

562 *(House Bill No. 261; Haines)* INCREASING THE DEBT LIMIT UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; INCREASING THE LOAN TO THE DEPARTMENT OF JUSTICE FOR THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM FROM \$4.5 MILLION TO \$22.5 MILLION; TEMPORARILY INCREASING THE FEE FOR ISSUANCE OF A CERTIFICATE OF OWNERSHIP FOR A MOTORBOAT OR SAILBOAT, A SNOWMOBILE, AN OFF-HIGHWAY VEHICLE, AND A MOTOR VEHICLE BY \$5; TEMPORARILY IMPOSING A \$10 FEE ON THE ISSUANCE OF A NEW CERTIFICATE OF TITLE; TEMPORARILY INCREASING THE FEE FOR OBTAINING A DUPLICATE CERTIFICATE OF OWNERSHIP; REQUIRING THE DEPOSIT OF THE NEW AND INCREASED FEES IN THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM ACCOUNT FOR PURPOSES OF REPAYING THE LOAN; AMENDING SECTIONS 17-5-1608, 17-5-2001, 23-2-508, 23-2-611, 23-2-811, 61-3-103, 61-3-203, 61-3-204, AND 61-3-550, MCA, AND SECTIONS 5 AND 9, CHAPTER 394, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE, A TERMINATION DATE, AND A RETROACTIVE APPLICABILITY DATE 2334

563 *(House Bill No. 298; Younkin)* ALLOWING A COUNTY OR MUNICIPALITY TO CHARGE FEES FOR AN EXAMINATION OF A DIVISION OF LAND TO DETERMINE WHETHER IT IS EXEMPT FROM SUBDIVISION REVIEW; AMENDING SECTIONS 76-3-201 AND 76-3-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2351

564 *(House Bill No. 403; Keane)* REQUIRING EACH CONTRACTOR TO ENSURE THAT AT LEAST 50 PERCENT OF THE CONTRACTOR'S WORKERS PERFORMING LABOR ON A STATE CONSTRUCTION PROJECT ARE BONA FIDE MONTANA RESIDENTS; AMENDING

SECTION 18-2-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2352

565 (House Bill No. 509; Olson) REVISING LAWS RELATED TO ELECTRICAL ENERGY; PROVIDING THAT AN ELECTRICITY BUYING COOPERATIVE MAY SERVE ONLY AS A SUPPLIER OR PROMOTER OF ALTERNATIVE ENERGY AND CONSERVATION PROGRAMS; ESTABLISHING AN ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE; REVISING CERTAIN LEGISLATIVE FINDINGS AND POLICY; DESIGNATING THE DEFAULT SUPPLIER AS THE DISTRIBUTION SERVICES PROVIDER OF A UTILITY; MODIFYING CERTAIN DEFINITIONS; DEFINING "DEFAULT SUPPLY SERVICE" AND "ELECTRICITY SUPPLY COSTS"; EXTENDING THE TRANSITION PERIOD TO JULY 1, 2027; MODIFYING PILOT PROGRAMS TO REQUIRE UTILITIES AND ELECTRICITY SUPPLIERS TO USE A SELECT SET OF SMALL CUSTOMERS TO MEASURE THE POTENTIAL FOR DEVELOPING AND OFFERING CUSTOMER CHOICE IN THE FUTURE; ESTABLISHING OPTIONS AND REQUIREMENTS FOR CUSTOMER CHOICE OF ENERGY SUPPLY; REQUIRING THE COMMISSION TO ESTABLISH RATES, FEES, RULES, AND PROCEDURES TO ENABLE CUSTOMERS TO REASONABLY CHOOSE AN ELECTRICITY SUPPLIER WHILE PROTECTING SMALL CUSTOMERS; ALLOWING THE COMMISSION TO ESTABLISH DIFFERENT CATEGORIES OF DEFAULT SUPPLY CUSTOMERS; PROHIBITING A CUSTOMER RECEIVING DEFAULT SUPPLY SERVICE FROM RESELLING ELECTRICITY; ALLOWING THE DEFAULT SUPPLIER TO IMPLEMENT DEMAND REDUCTION PROGRAMS; CLARIFYING CERTAIN PUBLIC UTILITY RESPONSIBILITIES AS A SUCCESSOR IN INTEREST; MODIFYING THE REQUIREMENT THAT PUBLIC UTILITIES EDUCATE CUSTOMERS ABOUT CUSTOMER CHOICE; MODIFYING PUBLIC UTILITY FUNCTIONAL SEPARATION REQUIREMENTS; MODIFYING DISTRIBUTION SERVICES REQUIREMENTS; MODIFYING PUBLIC UTILITY ELECTRICITY SUPPLY REQUIREMENTS; REQUIRING THAT A PUBLIC UTILITY'S DISTRIBUTION SERVICES PROVIDER PROVIDE DEFAULT SUPPLY SERVICE; REQUIRING THE COMMISSION TO ESTABLISH DEFAULT SUPPLY RESOURCE PLANNING AND PROCUREMENT GUIDELINES; REQUIRING THE COMMISSION TO ESTABLISH AN ELECTRICITY COST RECOVERY MECHANISM; PROVIDING FOR COMMISSION REVIEW OF ELECTRICITY SUPPLY COSTS; ALLOWING THE COMMISSION TO REQUIRE A DEFAULT SUPPLIER TO OFFER MULTIPLE SERVICE OPTIONS; REQUIRING A DEFAULT SUPPLIER TO OFFER ITS CUSTOMERS THE OPTION OF PURCHASING A PRODUCT COMPOSED OF CERTIFIED ENVIRONMENTALLY PREFERRED RESOURCES; EXTENDING THE UNIVERSAL SYSTEM BENEFITS CHARGE RATES BY 2 1/2 YEARS TO DECEMBER 31, 2005; PROVIDING FOR REIMBURSEMENT AND AUTHORIZING FINES IF AN ELECTRICITY SUPPLIER FAILS TO PROVIDE ELECTRICITY SUPPLY AND RELATED SERVICES TO RETAIL CUSTOMERS; MODIFYING COMMISSION AUTHORITY; REQUIRING THE COMMISSION TO MONITOR WHETHER OR NOT WORKABLE COMPETITION HAS DEVELOPED FOR SMALL CUSTOMERS; PROVIDING THAT THE COMMISSION REPORT TO THE LEGISLATURE IF IT DETERMINES THAT WORKABLE COMPETITION HAS DEVELOPED; MODIFYING BILL INFORMATION REQUIREMENTS; ELIMINATING DEFAULT SUPPLIER LICENSING REQUIREMENTS; ELIMINATING THE TRANSITION ADVISORY COMMITTEE AND TAX REVENUE ANALYSIS REQUIREMENTS;

TITLECONTENTS

AMENDING SECTIONS 5-5-202, 5-5-223, 35-19-104, 69-8-102, 69-8-103, 69-8-104, 69-8-201, 69-8-203, 69-8-204, 69-8-208, 69-8-210, 69-8-211, 69-8-301, 69-8-402, 69-8-403, 69-8-408, 69-8-409, AND 69-8-503, MCA; REPEALING SECTIONS 35-19-103, 69-8-416, 69-8-417, 69-8-501, AND 69-8-502, MCA; AND PROVIDING AN EFFECTIVE DATE. 2353

566 *(House Bill No. 539; Brueggeman)* REVISING THE PROVISIONS OF THE FAMILY EDUCATION SAVINGS ACT; CHANGING TERMINOLOGY TO CONFORM TO CHANGES IN FEDERAL LAW; CLARIFYING THE DUTIES OF THE BOARD OF REGENTS AND THE PROGRAM MANAGER'S RESPONSIBILITIES RELATING TO NONQUALIFIED WITHDRAWALS; CLARIFYING THE PROCEDURES INVOLVING INVESTMENT PRODUCTS WHEN A PROGRAM MANAGER IS TERMINATED; DEFINING "INVESTMENT PRODUCTS"; AND AMENDING SECTIONS 15-30-604, 15-62-103, 15-62-201, 15-62-203, 15-62-206, 15-62-207, 20-25-901, AND 20-25-902, MCA 2380

567 *(House Bill No. 564; Lindeen)* CREATING THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT TO ASSIST COMMUNITY ECONOMIC DEVELOPMENT BY PROVIDING TRAINING FOR EXISTING WORKERS AND INCENTIVES FOR BUSINESSES TO LOCATE AND EXPAND WITHIN THE STATE THROUGH GOVERNMENT-ASSISTED NEW JOBS TRAINING; PROVIDING CRITERIA FOR GRANT ELIGIBILITY; PROVIDING TEMPORARY FUNDING FOR WORKFORCE TRAINING GRANTS THROUGH BOARD OF INVESTMENT LOANS, WHICH WILL BE REPAID THROUGH A NEW JOBS CREDIT THAT IS GENERATED FROM THE CREATION OF PERMANENT, FULL-TIME JOBS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 2388

568 *(House Bill No. 608; Windy Boy)* RELATING TO THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN THE MONTANA INDIAN TRIBES AND THE STATE OF MONTANA; PROVIDING FOR TRIBAL CONSULTATION IN THE DEVELOPMENT OF STATE AGENCY POLICIES THAT DIRECTLY AFFECT INDIAN TRIBES; AUTHORIZING CERTAIN STATE EMPLOYEES TO RECEIVE ANNUAL TRAINING; PROVIDING FOR ANNUAL MEETINGS BETWEEN STATE AND TRIBAL OFFICIALS; AND REQUIRING AN ANNUAL REPORT BY A STATE AGENCY 2394

569 *(House Bill No. 609; Windy Boy)* HONORING THE SACRIFICE, PATRIOTISM, AND LONG TRADITION OF MILITARY PARTICIPATION BY MONTANA'S AMERICAN INDIAN CITIZENS BY REQUIRING SPECIFIC RECOGNITION OF MONTANA'S PAST, PRESENT, AND FUTURE AMERICAN INDIAN WAR VETERANS IN THE CONSTRUCTION OF THE AMERICAN INDIAN MONUMENT AND TRIBAL FLAG CIRCLE; AMENDING SECTION 22-2-601, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE. 2396

570 *(House Bill No. 642; Devlin)* PROVIDING THAT STATE AND LOCAL TAXES AND FEES PAID BY A PUBLIC UTILITY MAY BE SEPARATELY DISCLOSED IN A PUBLIC UTILITY CUSTOMER'S BILL; REQUIRING AN AUTOMATIC RATE ADJUSTMENT TO REFLECT STATE AND LOCAL TAXES AND FEES PAID BY A PUBLIC UTILITY; AMENDING SECTIONS 69-3-302 AND 69-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2397

571 *(House Bill No. 680; Noennig)* PROVIDING STANDARDS FOR DOCUMENTS THAT ARE RECORDED AND FILED WITH THE OFFICE OF THE CLERK AND RECORDER; ESTABLISHING FEES FOR

MONTANA SESSION LAWS 2003

c

	RECORDING CERTAIN DOCUMENTS; AMENDING SECTION 7-4-2631, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.	2399
572	<i>(House Bill No. 689; Olson)</i> REVISING THE LAWS RELATING TO LOBBYING REGISTRATION AND REPORTING BY PRINCIPALS; REVISING DEFINITIONS; REVISING REPORTING REQUIREMENTS; PROVIDING FOR ADJUSTMENT OF REPORTING THRESHOLD AMOUNTS FOR INFLATION; AMENDING SECTIONS 5-7-102, 5-7-103, 5-7-105, AND 5-7-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	2402
573	<i>(House Bill No. 693; Sinrud)</i> PROVIDING THAT CHILD SUPPORT OBLIGATIONS DETERMINED PURSUANT TO ADMINISTRATIVE PROCEDURE ARE EFFECTIVE IMMEDIATELY UPON SERVICE OF A NOTICE OF FINANCIAL RESPONSIBILITY ON THE PARENT OR PARENTS AND THAT FINAL ORDERS ARE RETROACTIVE TO THAT DATE; PROVIDING THAT A NOTICE OF FINANCIAL RESPONSIBILITY MUST INCLUDE A STATEMENT REGARDING ITS IMMEDIATE EFFECTIVENESS; AMENDING SECTION 40-5-225, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	2406
574	<i>(House Bill No. 720; Hurwitz)</i> REVISING THE LAWS GOVERNING WATER USE PERMITS AND CHANGES IN APPROPRIATION RIGHTS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES REGARDING DETERMINATION OF WHETHER OR NOT AN APPLICATION FOR A WATER USE PERMIT AND AN OBJECTION TO AN APPLICATION FOR A WATER USE PERMIT ARE CORRECT AND COMPLETE; PROVIDING THAT AN APPLICATION MUST BE TREATED AS IF IT IS CORRECT AND COMPLETE IF DEFICIENCIES ARE NOT IDENTIFIED WITHIN 180 DAYS; AND AMENDING SECTIONS 85-2-302 AND 85-2-308, MCA	2409
575	<i>(House Bill No. 727; Clark)</i> PROVIDING FOR THE DISCONTINUANCE OF THE EASTMONT HUMAN SERVICES CENTER; PROVIDING FOR THE TRANSFER OF THE FACILITY TO THE DEPARTMENT OF CORRECTIONS; PROVIDING A TIMEFRAME FOR THE CLOSURE AND TRANSFER; AMENDING SECTIONS 53-1-402, 53-1-602, AND 53-20-102, MCA; REPEALING SECTIONS 53-20-501 AND 53-20-502, MCA; AND PROVIDING AN EFFECTIVE DATE.	2411
576	<i>(House Bill No. 744; Clark)</i> DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO SEEK FEDERAL FUNDS TO OFFSET GENERAL FUND EXPENDITURES TO THE MAXIMUM EXTENT POSSIBLE; DIRECTING THE DEPARTMENT TO EVALUATE THE PROPOSED MEDICAID BLOCK GRANT AS PART OF REFINANCING ACTIVITIES AND REPORT FINDINGS AT EACH REGULAR MEETING OF THE LEGISLATIVE FINANCE COMMITTEE; PROVIDING FOR THE USE OF FUNDING OBTAINED PURSUANT TO THE DIRECTIVE; AUTHORIZING THE DEPARTMENT TO REINSTATE SERVICES IF AUTHORIZED BY THE OFFICE OF BUDGET AND PROGRAM PLANNING; AMENDING SECTIONS 17-2-108 AND 53-6-101, MCA; AND PROVIDING AN EFFECTIVE DATE.	2414
577	<i>(Senate Bill No. 126; Story)</i> REVISING THE GENERAL LAW RELATING TO CATEGORIES OF PROPERTY THAT ARE EXEMPT FROM PROPERTY TAXATION BY INCORPORATING CONTINGENT AMENDMENTS INTO A SINGLE VERSION OF THE SECTION; CLARIFYING THE CATEGORIES OF PROPERTY THAT ARE EXEMPT FROM PROPERTY TAXATION; PROVIDING THAT BIOLOGICAL CONTROL INSECTS ARE AN AGRICULTURAL PRODUCT AND RECEIVE AN AGRICULTURAL PRODUCT EXEMPTION; CLARIFYING PROPERTY TAX PROVISIONS RELATING TO INSURANCE	

TITLECONTENTS

COMPANIES BY REPEALING SPECIFIC LAWS THAT ARE REDUNDANT WITH GENERAL PROPERTY TAX LAWS; AMENDING SECTIONS 15-1-101, 15-6-201, AND 15-6-207, MCA, AND SECTION 31, CHAPTER 285, LAWS OF 1999; AND REPEALING SECTIONS 15-24-601 AND 15-24-602, MCA 2418

578 *(Senate Bill No. 270; Harrington)* REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO APPOINT AN INTERIM ADVISORY COMMITTEE TO STUDY ISSUES RELATED TO INDEPENDENT CONTRACTORS AND TO MAKE RECOMMENDATIONS TO THE 59TH LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2430

579 *(Senate Bill No. 370; Gebhardt)* REVISING WHICH ENTITIES PAY FOR THE MEDICAL EXPENSES OF INMATES HELD IN COUNTY DETENTION FACILITIES; PROVIDING CIRCUMSTANCES UNDER WHICH THE INMATE IS RESPONSIBLE FOR PAYMENT; REQUIRING THE HEALTH CARE PROVIDER TO COLLECT PAYMENTS FOR TREATMENT FROM INMATES WHO ARE ABLE TO PAY; PROVIDING CIRCUMSTANCES UNDER WHICH THE COUNTY IS RESPONSIBLE FOR PAYMENT; AMENDING SECTIONS 7-32-2222 AND 7-32-2245, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2431

580 *(Senate Bill No. 375; Elliott)* RESTRICTING THE USE OF BALED WASTE TIRES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2434

581 *(Senate Bill No. 381; Keenan)* PROVIDING THAT THE USE OF ARBITRATION FOR DISPUTE RESOLUTION UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975 IS NOT MANDATORY; AND AMENDING SECTIONS 75-7-111, 75-7-112, 75-7-113, 75-7-116, 75-7-117, AND 75-7-121, MCA. 2434

582 *(Senate Bill No. 484; Mangan)* AUTHORIZING MUNICIPALITIES, CONSOLIDATED LOCAL GOVERNMENTS, AND COUNTIES TO CREATE EMPOWERMENT ZONES TO ENCOURAGE THE CREATION OF JOBS WITHIN THE ZONES; ALLOWING A TAX CREDIT AGAINST INDIVIDUAL INCOME TAXES, CORPORATION INCOME OR LICENSE TAXES, OR INSURANCE PREMIUM TAXES FOR QUALIFYING 3-YEAR JOBS CREATED IN AN EMPOWERMENT ZONE; AND AUTHORIZING THE DEPARTMENT TO ADOPT RULES 2438

583 *(Senate Bill No. 490; Grimes)* REVISING THE LAWS GOVERNING STATE ASSUMPTION OF DISTRICT COURT COSTS; REVISING CERTAIN DISTRICT COURT EXPENSES; CLARIFYING WHEN DISTRICT COURT EXPENSES MUST BE PAID DIRECTLY BY THE STATE OR PAID BY THE COUNTIES AND REIMBURSED BY THE STATE; PROVIDING FOR RETROACTIVE COUNTY RESPONSIBILITY FOR ACCUMULATED SICK AND VACATION LEAVE FOR COUNTY EMPLOYEES WHO BECAME STATE EMPLOYEES UPON STATE ASSUMPTION OF DISTRICT COURT EXPENSES; CREATING A SPECIAL REVENUE ACCOUNT TO BE USED BY THE SUPREME COURT FOR PAYMENT OF ACCUMULATED VACATION AND SICK LEAVE FOR COUNTY EMPLOYEES WHO BECAME STATE EMPLOYEES ON JULY 1, 2002; AMENDING SECTIONS 3-1-130, 3-5-604, 3-5-901, 3-5-902, 41-5-111, 46-8-202, 53-21-116, AND 53-21-132, MCA, AND SECTION 57, CHAPTER 585, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2442

584 *(House Bill No. 536; Brueggeman)* PROVIDING FOR THE DISCLOSURE OF THE POTENTIAL FOR MOLD IN INHABITABLE PROPERTY WITH AGREEMENTS FOR THE SALE AND PURCHASE OF INHABITABLE PROPERTY; PROVIDING FOR THE DISCLOSURE OF PRIOR TESTING

AND MITIGATION AND PROVIDING IMMUNITY FOR SELLERS, LANDLORDS, SELLER'S AGENTS, BUYER'S AGENTS, AND PROPERTY MANAGERS WHO COMPLY WITH THE DISCLOSURE REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2451

585 *(House Bill No. 489; Lehman)* PROVIDING FOR THE CONTINUED PAYMENT OF DISTRICT COURT EXPENSES ASSOCIATED WITH CIVIL JURY TRIALS AFTER STATE ASSUMPTION OF DISTRICT COURTS COSTS; AMENDING SECTION 3-5-901, MCA; AND PROVIDING AN EFFECTIVE DATE 2452

586 *(House Bill No. 5; Kasten)* APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2005; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING THAT FOR THE PURPOSE OF FOSTERING PRIVATE EFFORTS TO RESTORE, MAINTAIN, AND DEVELOP THE OLD MAIN BUILDING AT THE MONTANA VETERANS' HOME, THE DEPARTMENT OF ADMINISTRATION MAY WAIVE REQUIREMENTS PERTAINING TO BIDDING AND BONDING FOR STATE BUILDING PROJECTS IN TITLE 18, MCA, TO LABOR REQUIREMENTS IN TITLE 18, MCA, AND TO CONTRACTOR REGISTRATION IN TITLE 39, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2454

587 *(House Bill No. 11; Kasten)* APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM AND APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT; APPROPRIATING FUNDS FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; TERMINATING CERTAIN TREASURE STATE ENDOWMENT GRANTS; AMENDING SECTION 1, CHAPTER 213, LAWS OF 1995; REPEALING SECTION 9, CHAPTER 435, LAWS OF 2001; AND PROVIDING EFFECTIVE DATES 2459

588 *(House Bill No. 363; Brown)* AMENDING THE DEFINITION OF "ADEQUATELY FUNDED" TO ELIMINATE THE REQUIREMENT THAT THE STATE COMPENSATION INSURANCE FUND RESERVE AN ADDITIONAL AMOUNT EQUAL TO 10 PERCENT OF THE TOTAL COST OF FUTURE BENEFITS REMAINING TO BE PAID FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING BEFORE JULY 1, 1990, AND THE COSTS OF ADMINISTERING THE CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING BEFORE JULY 1, 1990; TRANSFERRING TO THE GENERAL FUND MONEY FROM CLAIMS OCCURRING BEFORE JULY 1, 1990; IMMEDIATELY TRANSFERRING THE EXISTING 10 PERCENT RESERVE TO THE STATE GENERAL FUND; AMENDING SECTION 39-71-2352, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2465

589 *(House Bill No. 424; Jent)* REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH AND ENFORCE A TELEPHONE SOLICITATION NO-CALL LIST; PROHIBITING TELEPHONE SOLICITATION OF RESIDENTIAL SUBSCRIBERS WHO ARE ON THE

NO-CALL LIST; PROVIDING THAT THE NO-CALL LIST DATABASE IS NOT A PUBLIC RECORD; PROVIDING THAT RESIDENTIAL SUBSCRIBERS MAY BE PLACED ON THE NO-CALL LIST WITHOUT COST; PROHIBITING INTERFERENCE WITH CALLER IDENTIFICATION SERVICES; PROVIDING FOR CIVIL, CRIMINAL, AND INJUNCTIVE ACTIONS AGAINST PERSONS OR ENTITIES VIOLATING TELEPHONE SOLICITATION NO-CALL PROVISIONS; PROVIDING FOR DISSEMINATION OF INFORMATION ON THE NO-CALL LIST; CREATING A TELEPHONE SOLICITATION NO-CALL LIST ADMINISTRATION ACCOUNT; AND PROVIDING AN EFFECTIVE DATE 2467

590 *(House Bill No. 452; Raser)* PROVIDING A TAX CREDIT FOR CONTRIBUTIONS TO AN ACCOUNT TO BE USED FOR PROVIDING SERVICES TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; PROVIDING FOR THE USE OF MONEY IN THE ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE 2470

591 *(House Bill No. 558; Brown)* REVISING THE TERMS OF THE NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT; REMOVING THE REGISTRATION EXEMPTION FOR SNOWMOBILES REGISTERED IN ANOTHER STATE OR COUNTRY THAT ARE INTENDED TO BE TEMPORARILY USED WITHIN THIS STATE FOR NOT MORE THAN 30 DAYS; INCREASING THE FEE FOR A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT AND DIRECTING EXPENDITURE OF THE FEE FOR SNOWMOBILE TRAIL GROOMING ASSISTANCE IN IMPACTED AREAS, FOR INCREASED ENFORCEMENT OF SNOWMOBILE LAWS, AND FOR THE STATEWIDE SNOWMOBILE TRAIL GROOMING PROGRAM; PROVIDING THAT A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT IS VALID DURING THE FISCAL YEAR IN WHICH IT IS ISSUED; PROVIDING THAT A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT IS NOT REQUIRED FOR A SNOWMOBILE THAT WILL BE USED ONLY ON TRAILS THAT ARE MANAGED JOINTLY BY AGREEMENT BETWEEN MONTANA AND ANOTHER STATE; AMENDING SECTIONS 23-2-614 AND 23-2-615, MCA; AND PROVIDING AN EFFECTIVE DATE. 2471

592 *(House Bill No. 559; Gallus)* REVISING PROVISIONS RELATING TO REGISTRATION OF CERTAIN MOTOR VEHICLES, MOTOR BOATS, SAILBOATS, PERSONAL WATERCRAFT, AND SNOWMOBILES; PROVIDING FOR A REGISTRATION DECAL AS EVIDENCE OF PAYMENT OF FEES IMPOSED FOR A VEHICLE OR VESSEL REGISTRATION PERIOD; PRESCRIBING PLACEMENT OF THE REGISTRATION DECAL; SIMPLIFYING THE FEES IN LIEU OF TAX IMPOSED ON BOATS AND CERTAIN OTHER WATERCRAFT, SNOWMOBILES, OFF-HIGHWAY VEHICLES, TRAVEL TRAILERS AND CERTAIN OTHER TRAILERS, AND MOTORCYCLES AND QUADRICYCLES; CHANGING FROM ANNUAL TO ONE-TIME-ONLY THE REGISTRATION, LICENSING, AND IMPOSITION OF THE FEE IN LIEU OF TAX AND CERTAIN OTHER FEES PAYABLE ON CERTAIN BOATS AND OTHER WATERCRAFT, SNOWMOBILES, OFF-HIGHWAY VEHICLES, TRAVEL TRAILERS AND CERTAIN OTHER TRAILERS, AND MOTORCYCLES AND QUADRICYCLES; ELIMINATING THE FEE IN LIEU OF TAX ON CERTAIN WATERCRAFT; ELIMINATING THE REGISTRATION OF AND VARIOUS FEES PAYABLE ON CAMPERS; INCREASING FEES FOR ANNUALLY REGISTERED MOTOR VEHICLES; AMENDING SECTIONS 15-1-122, 15-16-202, 23-2-502, 23-2-510, 23-2-511, 23-2-512, 23-2-513, 23-2-514, 23-2-515,

MONTANA SESSION LAWS 2003

civ

	23-2-516,23-2-517, 23-2-518, 23-2-519, 23-2-601, 23-2-612, 23-2-614, 23-2-616, 23-2-617, 23-2-626, 23-2-642, 23-2-803, 23-2-804, 23-2-807, 23-2-809, 23-2-817, 61-1-129, 61-3-303, 61-3-311, 61-3-312, 61-3-313,61-3-317, 61-3-321, 61-3-332, 61-3-333, 61-3-463, 61-3-474, 61-3-521, 61-3-523, 61-3-526, 61-3-527, 61-3-530, 61-3-535, 61-3-560, AND 61-3-570, MCA; REPEALING SECTIONS 23-2-520, 23-2-618, 23-2-620, 23-2-810, 61-3-519, 61-3-524, 61-3-525, AND 61-3-606, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE	2474
593	(House Bill No. 775; Laszloffy) REVISING THE CONDITIONS UNDER WHICH A TAX APPEAL BOARD MAY ADJUST THE ESTIMATED VALUE OF REAL OR PERSONAL PROPERTY; AMENDING SECTION 1, CHAPTER 5, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	2519
594	(Senate Bill No. 47; Gebhardt) INCREASING THE BID THRESHOLD FOR LOCAL GOVERNMENT CONSTRUCTION CONTRACTS PAID FOR WITH GASOLINE AND VEHICLE FUELS TAX REVENUE; AMENDING SECTION 15-70-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	2520
595	(Senate Bill No. 57; Keenan) DEFINING "MENTAL DISEASE OR DEFECT" FOR PURPOSES OF CRIMINAL PROCEEDINGS; AND AMENDING SECTION 46-14-101, MCA	2523
596	(Senate Bill No. 130; McGee) PROVIDING AUTHORITY FOR AN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO COMPENSATE STATE TRUST LAND BENEFICIARIES FOR THE USE AND IMPACTS ASSOCIATED WITH HUNTING, FISHING, AND TRAPPING ON LEGALLY ACCESSIBLE STATE TRUST LANDS AS DEFINED IN DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION RULES; PROVIDING THAT 10 PERCENT OF THE GROSS REVENUE RECEIVED AS A RESULT OF THE AGREEMENT BE DEPOSITED IN THE STATE LANDS RECREATIONAL USE ACCOUNT AND 90 PERCENT OF THE REVENUE RECEIVED BE ALLOCATED AMONG THE TRUSTS; PROVIDING THAT AN AGREEMENT BETWEEN THE DEPARTMENTS DOES NOT CONSTITUTE CONSIDERATION WITH REGARD TO THE RESTRICTION OF LIABILITY OF A LANDOWNER; INCLUDING FEES FOR HUNTING, FISHING, AND TRAPPING PURPOSES PURSUANT TO AN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AS ONE OF THE ACTIONS FOR WHICH THE BOARD OF LAND COMMISSIONERS SHALL CONSIDER VARIOUS IMPACTS INCLUDING MANAGEMENT EXPENSES, WATER DEVELOPMENT, WEED CONTROL, AND FIRE CONTROL; PROVIDING AN EXEMPTION TO THE REQUIREMENT FOR A RECREATIONAL USE LICENSE FOR RECREATIONAL USE OF STATE TRUST LAND FOR HUNTING, FISHING, AND TRAPPING PURPOSES IF AN AGREEMENT IS REACHED BETWEEN THE TWO DEPARTMENTS; PROVIDING AN ALLOCATION SCHEME FOR REVENUE RECEIVED AS A RESULT OF AN AGREEMENT; ADDING MAINTENANCE OF ROADS NECESSARY FOR PUBLIC RECREATIONAL USE OF STATE TRUST LAND AS A QUALIFIED USE OF FUNDS IN THE RECREATIONAL USE ACCOUNT; INCREASING THE RESIDENT AND NONRESIDENT WILDLIFE CONSERVATION LICENSE FEES BY \$2 EACH; AMENDING SECTIONS 70-16-302, 77-1-106, 77-1-801, 77-1-802, 77-1-808, AND 87-2-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	2523

TITLECONTENTS

597 (*Senate Bill No. 271; Stapleton*) REQUIRING THAT THE PROCESS ORIENTED INTEGRATED SYSTEM (POINTS) COMPUTER SYSTEM OF THE DEPARTMENT OF REVENUE TO BE REPLACED WITH A DIFFERENT COMPUTER SYSTEM; REQUIRING THAT CURRENT DATA NEEDED FOR THE REPLACEMENT SYSTEM BE CORRECTED; PROVIDING THAT UNEMPLOYMENT INSURANCE TAX COLLECTIONS WILL NOT BE PROCESSED UNDER THE REPLACEMENT SYSTEM BY TERMINATING THE DELEGATION TO THE DEPARTMENT OF REVENUE OF RESPONSIBILITY FOR COLLECTING UNEMPLOYMENT INSURANCE TAXES FOR THE DEPARTMENT OF LABOR AND INDUSTRY; INCREASING THE DEBT LIMIT UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; AUTHORIZING A LOAN TO THE DEPARTMENT OF REVENUE FOR THE REPLACEMENT SYSTEM; REQUIRING THE DEPARTMENT OF REVENUE TO IMPOSE AN ADMINISTRATIVE CHARGE FOR TAX COLLECTION SERVICES; REQUIRING THE ADMINISTRATIVE CHARGE TO BE DEPOSITED IN AN ACCOUNT TO BE USED TO PAY THE DEBT SERVICE ON LOANS ISSUED FOR THE REPLACEMENT SYSTEM; APPROPRIATING MONEY FOR DEPARTMENT OF REVENUE'S TRANSITION COSTS AND FOR LOAN REPAYMENT; AMENDING SECTIONS 15-1-501, 17-5-1608, 17-5-2001, 39-51-301, 39-51-1109, 39-51-1301, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES AND TERMINATION DATES. 2530

598 (*Senate Bill No. 304; Johnson*) DIRECTING A COMMITTEE TO STUDY THE ROLE OF THE STATE COMPENSATION INSURANCE FUND AND TO DETERMINE IF IT IS COST-EFFECTIVE AND IN THE BEST INTEREST OF THE STATE, MONTANA EMPLOYEES, AND MONTANA EMPLOYERS TO SELL ALL OR A PORTION OF THE STATE COMPENSATION INSURANCE FUND ASSETS AND LIABILITIES AND TO STUDY THE CREATION OF AN ASSIGNED RISK POOL; PROVIDING FOR A REPORT TO THE 59TH LEGISLATURE; REQUIRING LEGISLATIVE APPROVAL OF A SALE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2539

599 (*Senate Bill No. 326; McGee*) GENERALLY REVISING THE LAWS RELATED TO GROWTH POLICIES AND PLANNING BOARDS; REVISING THE DEFINITION OF "GROWTH POLICY"; ELIMINATING THE DEFINITION OF A TERM THAT IS NOT USED IN THE GROWTH POLICY LAWS; REQUIRING THE GOVERNING BODY TO ASSIGN STAFF TO THE PLANNING BOARD AND ELIMINATING THE AUTHORITY OF THE PLANNING BOARD TO APPOINT STAFF; CLARIFYING THAT PREPARATION AND ADOPTION OF A GROWTH POLICY IS OPTIONAL; PROVIDING THAT A GROWTH POLICY MUST INCLUDE REQUIRED ELEMENTS BY OCTOBER 1, 2006, AND CLARIFYING THAT THE EXTENT TO WHICH THE REQUIRED ELEMENTS OF A GROWTH POLICY ARE ADDRESSED IS AT THE FULL DISCRETION OF THE GOVERNING BODY; PROVIDING THAT A GROWTH POLICY MAY COVER PART OF A JURISDICTIONAL AREA; REVISING THE PROCEDURES FOR ADOPTION, REVISION, AND REPEAL OF A GROWTH POLICY; REVISING THE PROVISIONS GOVERNING THE USE OF AN ADOPTED GROWTH POLICY; CONFORMING PROVISIONS IN THE ZONING AND SUBDIVISION LAWS TO THESE REVISIONS IN THE GROWTH POLICY LAWS; ELIMINATING THE REQUIREMENT THAT SUBDIVISION REGULATIONS BE IN ACCORDANCE WITH THE GOALS AND OBJECTIVES OF THE GROWTH POLICY WITHIN 1 YEAR OF ADOPTION OF A GROWTH POLICY; AMENDING SECTIONS 76-1-103, 76-1-106, 76-1-306, 76-1-601, 76-1-603, 76-1-604, 76-1-605, 76-2-201,

MONTANA SESSION LAWS 2003

cvi

- 76-2-310, 76-3-210, 76-3-504, 76-3-505, 76-4-122, AND 76-4-127, MCA;
AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2540
- 600 (*Senate Bill No. 330; Mangan*) REQUIRING THE PUBLIC SERVICE
COMMISSION TO TAKE INTO ACCOUNT THE ECONOMIC BENEFITS
ASSOCIATED WITH THE DEFAULT SUPPLIER'S PROCUREMENT OF
ELECTRICITY SUPPLY; AMENDING SECTION 69-8-210, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2549
- 601 (*Senate Bill No. 336; Mahlum*) IMPLEMENTING RECOMMENDATIONS
OF THE STATE PARK FUTURES II COMMITTEE TO IMPROVE THE
OPERATION AND FUNDING OF THE STATE PARK SYSTEM;
ASSESSING AN OPTIONAL \$4 FEE FOR EACH PASSENGER CAR OR
TRUCK UNDER 8,001 POUNDS GVW THAT IS REGISTERED FOR
LICENSING AND DIRECTING THAT THE FEE BE USED FOR STATE
PARKS, FOR FISHING ACCESS SITES, AND FOR THE OPERATION OF
STATE-OWNED FACILITIES AT VIRGINIA CITY AND NEVADA CITY;
ALLOWING THE REGISTRANT OF A PASSENGER CAR OR TRUCK
UNDER 8,001 POUNDS GVW TO MAKE A WRITTEN ELECTION NOT
TO PAY THE ADDITIONAL \$4 FEE IF THE REGISTRANT DOES NOT
INTEND TO USE STATE PARKS AND FISHING ACCESS SITES;
PROVIDING THAT PERSONS WHO PAY THE OPTIONAL FEE MAY
NOT BE REQUIRED TO PAY A DAY-USE FEE FOR ACCESS TO STATE
PARKS; AMENDING SECTIONS 15-1-122, 23-1-105, AND 61-3-321, MCA;
AND PROVIDING A DELAYED EFFECTIVE DATE 2550
- 602 (*Senate Bill No. 347; Keenan*) GENERALLY REVISING THE LAWS
RELATING TO PUBLIC MENTAL HEALTH SERVICES; PROVIDING
FOR DEVELOPMENT OF SERVICE AREA AUTHORITIES BY THE
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES;
PROVIDING FOR DEPARTMENT DUTIES, INCLUDING
PREPARATION AND MAINTENANCE OF A COMPREHENSIVE
MENTAL HEALTH PLAN, MENTAL HEALTH SERVICE AREAS, AND
PROVIDER CERTIFICATION STANDARDS; PROVIDING FOR
DEVELOPMENT OF REGIONAL SERVICE AREA AUTHORITIES AND
SERVICE PLANS WITH DEPARTMENT SUPPORT; REVISING
RESPONSES TO THE MENTAL DISABILITIES BOARD OF VISITORS
BY MENTAL HEALTH FACILITIES; REPEALING PROVISIONS
REGARDING REGIONAL MENTAL HEALTH CORPORATIONS AND
COMMUNITY MENTAL HEALTH CENTERS; AMENDING SECTIONS
19-3-108, 53-1-602, 53-6-101, 53-21-104, AND 53-21-138, MCA;
REPEALING SECTIONS 53-21-201, 53-21-202, 53-21-203, 53-21-204,
53-21-205, 53-21-206, 53-21-211, 53-21-212, 53-21-213, AND 53-21-214,
MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION
DATE 2554
- 603 (*Senate Bill No. 360; Thomas*) REQUIRING THE STATE FUND TO
INCLUDE A PROVISION IN EVERY POLICY OF INSURANCE ISSUED
THAT INCORPORATES A RESTRICTION ON THE USE AND
TRANSFER OF MONEY COLLECTED BY THE STATE FUND;
PROHIBITING THE LEGISLATURE FROM TRANSFERRING THE
ASSETS OF THE STATE FUND FOR CLAIMS FOR INJURIES
OCCURRING ON OR AFTER JULY 1, 1990, TO OTHER FUNDS OR FOR
OTHER PROGRAMS; AMENDING SECTIONS 39-71-2316, 39-71-2320,
39-71-2322, AND 39-71-2327, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE AND AN APPLICABILITY DATE 2567
- 604 (*Senate Bill No. 395; Perry*) PROVIDING FOR THE SPORT HUNTING OF
WILD BUFFALO OR BISON AS A MANAGEMENT TOOL THROUGH
ESTABLISHMENT OF A SPECIAL WILD BUFFALO OR BISON
LICENSE; ESTABLISHING REGULATIONS RELATED TO THE

SPECIAL WILD BUFFALO OR BISON LICENSE AND SETTING A PRICE FOR THE LICENSE; CLARIFYING DUTIES OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IN ADMINISTERING THE SPECIAL WILD BUFFALO OR BISON LICENSE, INCLUDING CONSULTATION AND COOPERATION WITH THE DEPARTMENT OF LIVESTOCK IN DEVELOPING AND IMPLEMENTING RULES REGARDING THE SAFE HANDLING OF WILD BUFFALO OR BISON PARTS; AMENDING SECTIONS 81-2-120, 87-1-216, AND 87-2-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2569

605 *(Senate Bill No. 415; Thomas)* REVISING THE QUALIFICATIONS FOR A GOLF COURSE BEER AND WINE LICENSE; CHANGING THE REQUIREMENTS FOR NUMBER OF HOLES, COURSE LENGTH, AND PROXIMITY TO A MUNICIPALITY; AMENDING SECTION 16-4-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2573

606 *(Senate Bill No. 461; Story)* TO MITIGATE THE EFFECTS OF THE PERIODIC PROPERTY TAX REVALUATION CYCLE THAT BEGINS IN 2003; DECREASING THE CLASS FOUR PROPERTY TAX RATE FROM 3.46 PERCENT TO 3.01 PERCENT OVER A 6-YEAR PERIOD; PROVIDING RATE ADJUSTMENTS TO CLASS FOUR PROPERTY TAX RATES FOR CERTAIN RESIDENCES WITH EXTRAORDINARY INCREASES IN MARKET VALUE; ESTABLISHING NEW CLASS FOUR PROPERTY TAX EXEMPTION RATES FOR RESIDENTIAL PROPERTY AND COMMERCIAL AND INDUSTRIAL PROPERTY THAT ADJUST THE EXEMPT PERCENTAGE OF VALUE OVER 6 YEARS; PROVIDING AN EXTENSION OF 2003 ADMINISTRATIVE DEADLINES RELATING TO PROPERTY TAXATION; PROVIDING FOR AN INTERIM PROPERTY TAX REAPPRAISAL STUDY COMMITTEE AND A TAX REFORM STUDY COMMITTEE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-6-134, 15-6-201, AND 15-7-111, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE 2575

607 *(Senate Bill No. 483; Keenan)* GENERALLY REVISING LAWS CONCERNING THE BUDGET AND BUDGET ANALYSIS; REQUIRING THE STATE TREASURER TO PROVIDE INFORMATION ON THE STATE WEBSITE ON HOW TO DONATE FUNDS TO ANY STATE FUNCTION; REQUIRING A POSITIVE GENERAL FUND ENDING BALANCE AT THE END OF A BIENNIUM; REVISING THE DEFINITION OF "PROJECTED GENERAL FUND BUDGET DEFICIT"; AND AMENDING SECTIONS 17-1-111, 17-7-102, 17-7-131, AND 17-7-140, MCA 2593

608 *(Senate Bill No. 485; Cobb)* REVISING THE ALLOCATION AND USE OF A PORTION OF TOBACCO SETTLEMENT PROCEEDS FUNDS FOR THE BIENNIUM BEGINNING JULY 1, 2003; TRANSFERRING TOBACCO SETTLEMENT PROCEEDS FUNDS TO A PREVENTION AND STABILIZATION ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO BE USED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO FINANCE, ADMINISTER, AND PROVIDE HEALTH AND HUMAN SERVICES; AUTHORIZING THE USE OF TOBACCO SETTLEMENT PROCEEDS FUNDS TO PROVIDE MATCHING FUNDS FOR THE MEDICAID PROGRAM; ESTABLISHING THE PREVENTION AND STABILIZATION ACCOUNT AND ALLOCATING ACCOUNT PROCEEDS; APPROPRIATING FUNDS FROM THE PREVENTION AND STABILIZATION ACCOUNT; AMENDING SECTION 17-6-606, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2597

609	(<i>Senate Bill No. 487; Pease</i>) REVISING LAWS RELATED TO WIND ENERGY TAXATION AND ECONOMIC DEVELOPMENT; ELIMINATING THE TAX CREDIT LIMITATION FOR WIND ENERGY DEVELOPMENT; INCREASING THE MAXIMUM AMOUNT OF OUTSTANDING ECONOMIC DEVELOPMENT BONDS THAT THE BOARD OF INVESTMENTS MAY ISSUE; INCREASING THE ALLOWABLE AMOUNT OF MONEY THAT THE BOARD OF INVESTMENTS MAY USE FOR FINANCING A MAJOR PROJECT; AMENDING SECTIONS 15-32-404, 17-5-1506, AND 17-5-1527, MCA; REPEALING SECTION 15-32-403, MCA; AND PROVIDING EFFECTIVE DATES	2599
610	(<i>Senate Bill No. 493; Keenan</i>) REVISING THE AUTHORIZED USE OF THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM ACCOUNT; AMENDING SECTION 61-3-550, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.	2602
611	(<i>Senate Bill No. 362; Grimes</i>) INCREASING THE PENALTIES FOR ILLEGAL POSSESSION OR CONSUMPTION OF AN INTOXICATING SUBSTANCE BY A PERSON UNDER 21 YEARS OF AGE; REQUIRING CHEMICAL DEPENDENCY ASSESSMENT AND TREATMENT IN CERTAIN CASES; REQUIRING COURTS TO REPORT THE NAMES OF MINORS WHO ARE CONVICTED OF THE OFFENSE TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND REQUIRING THAT DEPARTMENT TO MAKE THE NAMES AVAILABLE UPON REQUEST TO PEACE OFFICERS AND COURTS; AND AMENDING SECTIONS 45-5-624 AND 61-2-302, MCA.	2603
612	(<i>House Bill No. 2; Lewis</i>) APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2005; AND PROVIDING AN EFFECTIVE DATE.	2608

HOUSE JOINT RESOLUTIONS

<u>HJR</u>		<u>Page</u>
2	(<i>Devlin</i>) ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED GENERAL FUND REVENUE FOR EACH YEAR OF THE 2004-05 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED GENERAL FUND BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING A PRELIMINARY JUNE 30, 2002, UNRESERVED GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; ESTABLISHING OFFICIAL ESTIMATES OF CERTAIN NONGENERAL FUND REVENUE; AND REQUESTING THAT THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 2003, 2004, AND 2005.	2669
3	(<i>Lawson</i>) REQUESTING AN INTERIM COMMITTEE STUDY TO EXAMINE CHILD ABUSE AND NEGLECT PROCEEDINGS IN ORDER TO DETERMINE HOW TO PROVIDE REPRESENTATION FOR INDIGENT FAMILIES AND TO DETERMINE THE APPROPRIATE EARLIEST OPPORTUNITY.	2678
4	(<i>Lange</i>) REQUESTING AN INTERIM STUDY TO INVESTIGATE OPTIONS FOR IMPROVING THE SUPPLY AND DISTRIBUTION OF WATER IN MONTANA AND TO EVALUATE THE WATER STORAGE	

TITLE CONTENTS

POLICY ESTABLISHED IN SECTION 85-1-703, MCA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 59TH LEGISLATURE AND THE MONTANA CONGRESSIONAL DELEGATION 2680

5 (Lewis) URGING LEWIS AND CLARK COUNTY TO WORK COOPERATIVELY WITH THE BOARD OF REGENTS TO SECURE FINANCING FOR A NEW BUILDING AT THE HELENA COLLEGE OF TECHNOLOGY OF THE UNIVERSITY OF MONTANA BY ISSUING BONDS TO FINANCE THE CONSTRUCTION OF THE PROJECT AND TO ENTER INTO AN AGREEMENT TO LEASE THE FACILITY, UPON COMPLETION, TO THE BOARD OF REGENTS UNTIL THE BONDS ARE RETIRED 2681

6 (Brown) URGING THE UNITED STATES CONGRESS AND PRESIDENT GEORGE W. BUSH TO INCREASE FUNDING FOR SPECIAL EDUCATION TO MEET THE FEDERAL COMMITMENT UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2682

8 (Juneau) REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE TO GATHER INFORMATION RELATING TO THE DROPOUT RATES, GRADUATION RATES, AND AT-RISK FACTORS AMONG AMERICAN INDIAN STUDENTS IN MONTANA'S PUBLIC SCHOOLS AND TO DEVELOP A STRATEGIC STATE PLAN TO REDUCE THE DROPOUT RATE AMONG ALL STUDENTS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY AND RECOMMENDATIONS TO THE 59TH LEGISLATURE 2683

9 (Smith) REQUESTING THAT CONGRESS INVESTIGATE WAYS OF DEALING WITH THE COST OF MEDICATIONS IN ORDER TO MAKE THEM AFFORDABLE. 2684

10 (Lawson) URGING THE BOARD OF PUBLIC EDUCATION TO INTEGRATE THE PRINCIPLES OF BASIC PERSONAL FINANCE INTO THE CONTENT AND PERFORMANCE STANDARDS ESTABLISHED FOR MONTANA'S PUBLIC SCHOOLS AND URGING THE BOARDS OF TRUSTEES OF MONTANA'S SCHOOL DISTRICTS TO IMPLEMENT THE STANDARDS INTO THE CURRICULA 2685

11 (Smith) REQUESTING GOVERNOR JUDY MARTZ TO WRITE A LETTER TO THE MONTANA CONGRESSIONAL DELEGATION URGING SUPPORT FOR A FEDERAL INCREASE IN IMPACT AID FUNDING 2686

12 (Fuchs) EXPRESSING A RECOGNITION BY THE PEOPLE OF MONTANA THAT INDIVIDUAL CITIZENS OF THE UNITED STATES, ACTING TOGETHER WITH LAW ENFORCEMENT AGENCIES AND EMERGENCY PERSONNEL AND IN SUPPORT OF OUR MILITARY FORCES, ARE THE SOLE EFFECTIVE MEANS OF THWARTING TERRORISM IN THESE UNITED STATES; ASSERTING THAT FREEDOM OF INDIVIDUALS WILL NOT BE PRESERVED BY THE TRANSFER OF POWER FROM INDIVIDUALS TO GOVERNMENT IN THE NAME OF FIGHTING TERRORISM; AND ENCOURAGING CONGRESS TO PASS AN ACT THAT SUPPORTS AND AUTHORIZES INDIVIDUALS TO INTERDICT TERRORISM WHEREVER IT MAY OCCUR ON THE SOIL OF THE UNITED STATES, RECOGNIZES THE IMPORTANCE OF INDIVIDUALS HAVING TOOLS TO FIGHT TERRORISM, REMOVES CIVIL AND CRIMINAL LIABILITY FOR ACTIONS TAKEN TO INTERDICT TERRORISM, AND CREATES A REWARD FOR INDIVIDUALS WHO PLAY AN EFFECTIVE PART IN

PREVENTING TERRORISM AGAINST THE PEOPLE OF THE UNITED STATES 2687

13 *(Hurwitz)* REQUESTING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES CONDUCT A STUDY REGARDING THE HEALTH PROGRAMS ADMINISTERED BY THE DEPARTMENT AND PROVIDE A REPORT TO THE 59TH LEGISLATURE, OUTLINING OPTIONS THAT MAY BE UNDERTAKEN TO REDESIGN THE HEALTH PROGRAMS ADMINISTERED BY THE DEPARTMENT 2688

15 *(Wagman)* URGING THE U.S. SECRETARY OF AGRICULTURE AND THE U.S. SECRETARY OF THE INTERIOR TO DIRECT THE APPROPRIATE FEDERAL AGENCIES TO EXPEDITE THE ELIMINATION OF BRUCELLOSIS IN THE YELLOWSTONE NATIONAL PARK BISON AND ELK HERDS 2690

16 *(Mendenhall)* URGING PRESIDENT GEORGE W. BUSH AND THE UNITED STATES CONGRESS TO EXTEND THE EXISTING FEDERAL TAX WIND POWER CREDIT 2691

17 *(Peterson)* EXPRESSING CONCERN OVER THE IMPACT OF PROPOSED TRADE AGREEMENTS ON MONTANA'S AGRICULTURAL INDUSTRY AND STRONGLY URGING UNITED STATES OFFICIALS TO CONSIDER THE IMPACTS ON THAT INDUSTRY IN NEGOTIATING THESE TRADE AGREEMENTS 2692

18 *(Waitschies)* URGING FEDERAL EMERGENCY DISASTER ASSISTANCE FOR CROP AND LIVESTOCK PRODUCERS WHO HAVE SUFFERED LOSSES DURING THE 2001 AND 2002 AGRICULTURAL PRODUCTION YEARS BECAUSE OF DROUGHT AND URGING AN EARLY DECISION ON THE RELEASE OF CONSERVATION RESERVE PROGRAM ACREAGES FOR HAYING AND GRAZING PURPOSES 2693

19 *(Raser)* REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REVIEW HEALTH COVERAGE AND PUBLIC ASSISTANCE PROGRAMS' ELIGIBILITY REQUIREMENTS TO STREAMLINE THE ENROLLMENT PROCESS. 2694

20 *(Roberts)* REQUESTING THAT THE LEGISLATIVE AUDIT COMMITTEE COMPLETE A SERIES OF LIMITED-SCOPE PERFORMANCE AUDITS OF THE OPERATIONS OF PROFESSIONAL LICENSING BOARDS ADMINISTRATIVELY ATTACHED TO THE DEPARTMENT OF LABOR AND INDUSTRY. 2696

21 *(Morgan)* URGING THE GOVERNOR TO SET ASIDE A TIME ON MEMORIAL DAY AS A MOMENT OF REMEMBRANCE TO HONOR THE ACTS AND EFFORTS OF MONTANANS WHO DIED IN SERVICE TO THE UNITED STATES AND TO HONOR THOSE MONTANANS WHO CONTINUE TO SERVE ON BEHALF OF THIS COUNTRY 2697

22 *(Ripley)* REQUESTING THE U.S. BOARD ON GEOGRAPHIC NAMES TO RENAME HALFBREED RAPIDS ON THE MISSOURI RIVER AS "PINE ISLAND RAPIDS", THE NAME GIVEN THE RAPIDS BY MEMBERS OF THE LEWIS AND CLARK EXPEDITION 2698

25 *(Juneau)* TO SUPPORT THE GRASSROOTS EFFORTS OF THE NORTHCENTRAL MONTANA COMMUNITY VENTURES PROJECT TO DETERMINE STRATEGIES TO REDUCE POVERTY IN NORTHCENTRAL MONTANA AND TO SUPPORT THE NORTHCENTRAL MONTANA COMMUNITY VENTURES PROJECT IN ITS EFFORTS TO OBTAIN FUNDING FROM THE NORTHWEST AREA FOUNDATION 2698

TITLE CONTENTS

26 *(Younkin)* SUPPORTING ALL NECESSARY STEPS TO MOVE MONTANA INTO A HYDROGEN-BASED ECONOMY 2700

28 *(Lange)* ENCOURAGING THE DEPARTMENT OF ADMINISTRATION TO INITIATE A COLLABORATIVE STUDY CONCERNING THE PROCESS AND CRITERIA FOR STATE AGENCIES TO USE IN AWARDING PUBLIC WORKS CONSTRUCTION CONTRACTS. 2701

29 *(Gallus)* REAFFIRMING THE LEGISLATURE'S COMMITMENT TO ENHANCING THE STATE'S CAPACITY TO IMPROVE CARE FOR MONTANA'S CHILDREN AND FAMILIES THROUGH STRENGTHENING COMMUNITY-BASED HEALTH SERVICES, HUMAN SERVICES, AND WORK-RELATED, SOCIAL, AND RECREATIONAL SERVICES AND PROGRAMS AND THROUGH IMPROVING THE VIABILITY OF THE PRIVATE-NONPROFIT CAREGIVER AND VENDOR NETWORK NECESSARY TO PROVIDE THOSE SERVICES AND ENDORSING THE PRINCIPLE THAT COMMUNITY SERVICES FOR CITIZENS SHOULD BE PROVIDED TO ACHIEVE THE GREATEST DEGREE OF QUALITY RESULTS, NORMALIZATION, AND MEANINGFUL PARTICIPATION IN THE COMMUNITIES AS POSSIBLE. 2702

30 *(Windy Boy)* REQUESTING THAT THE WHITE HOUSE OFFICE OF FAITH-BASED AND COMMUNITY INITIATIVES BE ENCOURAGED TO RECOGNIZE THAT THE SPIRITUAL PRACTICES OF TRADITIONAL INDIAN CULTURES ARE UNIQUE TO EACH TRIBE, THAT TRIBAL LEADERS AT THE LOCAL LEVEL BE CONSULTED IN THE IMPLEMENTATION OF ANY PROGRAMS, AND THAT THE AMERICAN INDIAN WELFARE REFORM ACT FOR THE OPERATION OF PUBLIC ASSISTANCE BY INDIAN TRIBES BE SUPPORTED 2703

31 *(Facey)* ENCOURAGING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEVELOP INNOVATIVE PROGRAMS WITHIN THE TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROGRAM THAT DIVERT FAMILIES FROM RECEIVING CASH ASSISTANCE AND THAT PROVIDE A PATHWAY OUT OF POVERTY 2705

32 *(Haines)* REQUESTING THAT THE GOVERNOR, THE MONTANA CONGRESSIONAL DELEGATION, AND THE U.S. SECRETARY OF THE INTERIOR SEEK THE IMMEDIATE DELISTING OF THE GRAY WOLF AND THE RETURN OF CONTROL OF THE WOLF TO THE STATE; URGING MONTANA OFFICIALS TO ACTIVELY PURSUE THE DELISTING EFFORT ON TERMS FAVORABLE TO MONTANA AND RECOMMENDING CERTAIN SPECIFIC TERMS FOR DELISTING; AND URGING THE STATE ATTORNEY GENERAL TO JOIN THE STATE IN ANY LEGAL ACTION BROUGHT TO BLOCK THE WOLF DELISTING PROCESS. 2706

34 *(Balyeat)* URGING CONGRESS TO ENACT AND THE PRESIDENT OF THE UNITED STATES TO APPROVE LEGISLATION TO ALLOW TAXPAYERS TO DEDUCT SALES TAXES ON THEIR FEDERAL INCOME TAX RETURN. 2707

35 *(Bixby)* REQUESTING AN INTERIM STUDY REGARDING MONTANA'S SHARE OF WATER FROM THE INTERSTATE TRIBUTARIES PURSUANT TO THE YELLOWSTONE RIVER COMPACT 2708

37 *(Noennig)* REQUESTING AN INTERIM REVIEW OF THE MONTANA SUBDIVISION AND PLATTING ACT AND RECOMMENDATIONS FOR LEGISLATION TO REVISE THE ACT SO THAT IT IS CLEAR, CONCISE, LOGICALLY ORGANIZED, AND IN CONFORMANCE WITH THE BILL DRAFTING MANUAL; AND REQUESTING THAT THE FINAL

MONTANA SESSION LAWS 2003

RESULTS OF THE STUDY BE REPORTED TO THE 59TH LEGISLATURE 2710

40 *(Younkin)* REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN INTERIM COMMITTEE TO STUDY ISSUES ASSOCIATED WITH WATER RIGHTS FOR PRIVATE PONDS FOR FISH, WILDLIFE, RECREATIONAL, WETLAND, AESTHETIC, AND GRAVEL MINING USES; AND REQUESTING A REPORT OF THE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF THE STUDY TO THE 59TH LEGISLATURE AND THE GOVERNOR. 2711

43 *(Windy Boy)* REQUESTING AN INTERIM STUDY OF THE SURFACE WATER AND GROUND WATER IMPACTS OF THE ABANDONED ZORTMAN AND LANDUSKY MINE SITES ON THE MILK AND MISSOURI RIVER WATERSHEDS AND THE EFFECTIVENESS OF THE STATE RECLAMATION EFFORTS AT THE ZORTMAN AND LANDUSKY MINE SITES IN PROTECTING THE WATERSHEDS; AND REQUESTING THAT THE RESULTS OF THE STUDY BE REPORTED TO THE 59TH LEGISLATURE 2713

HOUSE RESOLUTIONS

<u>HR</u>	<u>Page</u>
1 <i>(Brown)</i> REVISING AND ADOPTING THE HOUSE RULES	2715
2 <i>(Galvin-Halcro)</i> RECOGNIZING THE DISTINGUISHED SERVICE OF UNITED STATES SEAGOING MARINES AND THE NAVAL CRUISE SHIP, USS HELENA, AND DESIGNATING NOVEMBER 2003 AS UNITED STATES SEAGOING MARINES MONTH.	2738
3 <i>(Barrett)</i> REJECTING THE LEGISLATIVE PLAN THAT THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION SUBMITTED TO THE LEGISLATURE	2739
4 <i>(Wanzenried)</i> SUPPORTING MONTANA'S ARMED FORCES PERSONNEL IN OPERATION IRAQI FREEDOM	2741

SENATE JOINT RESOLUTIONS

<u>SJR</u>	<u>Page</u>
1 <i>(Thomas)</i> REVISING AND ADOPTING THE JOINT LEGISLATIVE RULES	2742
2 <i>(Ryan)</i> SUPPORTING A HEALTHY SCHOOL ENVIRONMENT BY URGING SCHOOL DISTRICTS TO OFFER NUTRITIOUS FOOD AND BEVERAGE CHOICES AND PROVIDE OPPORTUNITIES FOR PHYSICAL ACTIVITY WHENEVER POSSIBLE	2757
3 <i>(Tash)</i> URGING THE BOARD OF REGENTS TO ADOPT POLICIES GRANTING A MEMBER OF THE MILITARY WHO IS CALLED OR ORDERED TO ACTIVE MILITARY DUTY OTHER THAN ACTIVE DUTY FOR TRAINING, INCLUDING, IN THE CASE OF MEMBERS OF THE MONTANA NATIONAL GUARD, ACTIVE DUTY AS PROVIDED FOR IN ARTICLE VI, SECTION 13, OF THE MONTANA CONSTITUTION, AN EDUCATIONAL LEAVE OF ABSENCE UPON RELEASE FROM ACTIVE	

	DUTY; URGING RESTORING A MEMBER UPON RELEASE FROM ACTIVE DUTY TO THE EDUCATIONAL STATUS ATTAINED PRIOR TO BEING CALLED OR ORDERED INTO ACTIVE DUTY; AND URGING REFUNDING OF TUITION OR FEES PAID BY A MILITARY MEMBER WHO IS ORDERED TO ACTIVE DUTY	2758
4	<i>(Elliott)</i> REQUESTING DELISTING OF THE WOLF PURSUANT TO THE FEDERAL ENDANGERED SPECIES ACT OF 1973; REQUESTING THAT CONGRESS ESTABLISH AND FUND THE NORTHERN ROCKY MOUNTAIN GRIZZLY BEAR AND GRAY WOLF NATIONAL MANAGEMENT TRUST; REQUESTING THAT WOLF POPULATION MANAGEMENT METHODS INCLUDE NONLETHAL AND LETHAL METHODS; ENCOURAGING THE FISH, WILDLIFE, AND PARKS COMMISSION TO RECLASSIFY THE GRAY WOLF WHEN REGULATION OF THE WOLF POPULATION IS NEEDED; AND REQUESTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS OR THE DEPARTMENT OF LIVESTOCK TO ADDRESS LIVESTOCK DEPREDATIONS EXPEDITIOUSLY	2760
7	<i>(Laible)</i> EXPRESSING SUPPORT FOR THE NATIONAL FOREST COUNTY PARTNERSHIP RESTORATION PROGRAM ESTABLISHED BY THE 106TH CONGRESS FOR IMPLEMENTATION IN NATIONAL FORESTS IN MONTANA AND OTHER WESTERN STATES	2761
8	<i>(Tester)</i> RECOMMENDING THAT IN RECOGNITION OF THE IMPORTANCE OF RESPONDING TO THE DESIRES AND NEEDS OF A MAJORITY OF MONTANA'S FOREIGN GRAIN CUSTOMERS, GENETICALLY ENGINEERED WHEAT OR BARLEY BE GROWN IN MONTANA ONLY WHEN THERE IS ACCEPTANCE OF THESE GENETICALLY ENGINEERED CROPS BY A MAJORITY OF MONTANA'S FOREIGN MARKETS; RECOMMENDING THAT RESEARCH OF GENETICALLY ENGINEERED CROPS SHOULD CONTINUE; AND ENCOURAGING REGULATORY AGENCIES TO RECOGNIZE THEIR RESPONSIBILITY AS GENETICALLY ENGINEERED CROPS ARE INTRODUCED	2763
9	<i>(Nelson)</i> URGING THE MEMBERS OF THE MONTANA CONGRESSIONAL DELEGATION TO INTRODUCE AND SUPPORT LEGISLATION IN THE U.S. CONGRESS TO ESTABLISH A MINIMUM LAKE LEVEL IN FORT PECK RESERVOIR	2764
11	<i>(Schmidt)</i> TO REQUEST A STUDY OF THE PROBLEMS OF ALCOHOL AND DRUG ABUSE AND OF PREVENTION, EARLY INTERVENTION, AND TREATMENT	2765
13	<i>(Toole)</i> REQUESTING AN INTERIM STUDY TO INVESTIGATE OPTIONS FOR IMPROVING ENERGY EFFICIENCY BUILDING CODES LAWS AND OTHER ENERGY EFFICIENCY AND CONSERVATION PRACTICES; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 59TH LEGISLATURE	2767
14	<i>(Curtiss)</i> URGING THE MONTANA CONGRESSIONAL DELEGATION TO PURSUE FUNDING OPTIONS FROM FEDERAL SOURCES FOR THE DEVELOPMENT, CONSTRUCTION, AND MAINTENANCE IN LIBBY, MONTANA, OF A CENTER FOR THE STUDY OF ASBESTOS AND THE TREATMENT OF ILLNESSES RELATED TO TREMOLITE-SERIES ASBESTOS	2768
15	<i>(Nelson)</i> URGING THE CREATION OF A NEW STATE PARK AT BRUSH LAKE IN REGION 6, CONTINGENT ON FUNDING; AND PROVIDING THAT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS GIVE ESTABLISHMENT OF A STATE PARK AT BRUSH LAKE PRIORITY WHEN FUNDING BECOMES AVAILABLE.	2770

16	(<i>Sprague</i>) REQUESTING THAT CONGRESS REVISE THE ENDANGERED SPECIES ACT TO ALLOW HAZING OF CARNIVORES LISTED AS AN ENDANGERED OR THREATENED SPECIES; AND URGING THE STATE ATTORNEY GENERAL TO JOIN THE STATE IN ANY LEGAL ACTION BROUGHT TO ALLOW THE DEFENSE OF PROPERTY AGAINST LISTED PREDATORS	2770
17	(<i>Tester</i>) REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT SUFFICIENT STAFF RESOURCES TO STUDY METHODS OF SIMPLIFYING LAWS RELATED TO WORKERS' COMPENSATION AND OCCUPATIONAL DISEASES	2772
21	(<i>Cocchiarella</i>) DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO WORK TO INCREASE THE AVAILABILITY OF CHILD CARE AND TO REVIEW THE STATUS OF CHILD CARE IN MONTANA	2773
22	(<i>McGee</i>) SHOWING CONDITIONAL SUPPORT FOR DRILLING FOR OIL AND GAS IN THE COASTAL PLAIN OF THE ARCTIC NATIONAL WILDLIFE REFUGE; AND PRIORITIZING THE IMPORTANCE OF TURNING TO ALTERNATIVE FUELS, ALTERNATIVE ENERGY SOURCES, TECHNOLOGY IMPROVEMENTS, AND IMPROVEMENTS IN EFFICIENCY AS MEANS OF ENSURING AMERICA'S LONG-TERM ENERGY INDEPENDENCE	2773
23	(<i>Barkus</i>) ASSIGNING HOLDOVER SENATORS FOR THE TRANSITION TO THE NEW REDISTRICTING PLAN	2775
24	(<i>O'Neil</i>) REQUESTING THE UNITED STATES CONGRESS TO AUTHORIZE A FEASIBILITY STUDY AND DEMONSTRATION PROJECT TO CONSIDER TRANSFERRING FEDERAL FUNDS ALLOCATED TO THE STATE OF MONTANA FOR DISTRIBUTION TO MONTANA'S AMERICAN INDIANS AS A MEANS OF PROVIDING BENEFITS TO SUPPORT TRIBAL PROGRAMS DIRECTLY TO MONTANA'S FEDERALLY RECOGNIZED TRIBAL GOVERNMENTS IN THE FORM OF DIRECT PAYMENTS INSTEAD OF TRANSFERRING FUNDS THROUGH A STATE AGENCY	2777
25	(<i>Bohlinger</i>) STRONGLY URGING THAT TAIWAN BE PERMITTED APPROPRIATE AND MEANINGFUL PARTICIPATION IN ACTIVITIES OF THE WORLD HEALTH ORGANIZATION	2778
26	(<i>Bohlinger</i>) STRONGLY URGING THE UNITED STATES CONGRESS TO APPROPRIATE JUST COMPENSATION TO THE STATE OF MONTANA FOR THE IMPACT OF FEDERAL LAND OWNERSHIP ON THE STATE'S ABILITY TO FUND PUBLIC EDUCATION	2779
27	(<i>Johnson</i>) URGING THE BOARD OF DIRECTORS OF THE CHARLES M. BAIR FAMILY TRUST TO KEEP THE CHARLES M. BAIR FAMILY MUSEUM OPEN AND OPERATIONAL AT ITS CURRENT LOCATION IN THE BAIR FAMILY HOME IN MARTINSDALE IN MEAGHER COUNTY	2780
29	(<i>Toole</i>) REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT STAFF RESOURCES TO STUDY THE TAXATION OF CENTRALLY ASSESSED PROPERTIES, WITH A FOCUS ON UTILITIES AND UTILITY PROPERTIES	2781
31	(<i>Tash</i>) REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT STAFF RESOURCES TO STUDY ELEMENTS OF MONTANA'S JUVENILE JUSTICE SYSTEM REGARDING JUVENILE PROBATION	

TITLE CONTENTS

	AND TO DETERMINE WHETHER ANY CHANGES IN ITS ADMINISTRATION ARE APPROPRIATE	2782
32	<i>(Grimes)</i> REQUESTING THE LEGISLATIVE COUNCIL TO APPOINT AN INTERIM COMMITTEE OR DIRECT STAFF RESOURCES TO STUDY THE COSTS AND AVAILABILITY OF LIABILITY INSURANCE FOR HEALTH CARE FACILITIES AND HEALTH CARE PROVIDERS ASSOCIATED WITH HEALTH CARE FACILITIES; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 59TH LEGISLATURE	2783

SENATE RESOLUTIONS

<u>SR</u>		<u>Page</u>
1	<i>(Thomas)</i> REVISING AND ADOPTING THE SENATE RULES	2785
2	<i>(Barkus)</i> REJECTING THE LEGISLATIVE PLAN THAT THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION SUBMITTED TO THE LEGISLATURE	2804
4	<i>(Cobb)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 31, 2003, TO THE SENATE	2806
5	<i>(Cobb)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 31, 2003, TO THE SENATE	2806
6	<i>(Wheat)</i> SUPPORTING MONTANA'S ARMED FORCES PERSONNEL IN OPERATION IRAQI FREEDOM	2807
7	<i>(Cobb)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 10, 2003, TO THE SENATE	2807
8	<i>(Cobb)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 31, 2003, TO THE SENATE	2809
9	<i>(Cobb)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 31, 2003, AND APRIL 7, 2003, TO THE SENATE	2817
10	<i>(Cobb)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED APRIL 10, 2003, TO THE SENATE	2818
11	<i>(Grimes)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF THE HONORABLE JOHN ARNAN WARNER AS JUSTICE OF THE MONTANA SUPREME COURT	2819

SESSION LAWS
Enacted by the
FIFTY-EIGHTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 6, 2003, through April 26, 2003

**Explanatory Note: Section 5-11-205, MCA, provides that
new parts of existing statutes be printed in italics and
that deleted provisions be shown as stricken.**

**COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION**

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AMENDING SECTION 1, CHAPTER 1, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations. The following amounts are appropriated from the general fund for fiscal years 2003, 2004, and 2005 for the operation of the 58th legislature and the costs of preparing for the 59th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate (25)	\$2,062,881
2. House of Representatives (26)	3,339,035
3. Legislative Services Division (22)	632,510

Section 2. Section 1, Chapter 1, Laws of 2001, is amended to read:

“Section 1. Appropriations. (1) The following amounts are appropriated from the general fund for fiscal years 2001, 2002, and 2003 for the operation of the 57th legislature and costs of preparing for the 58th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate (25)	\$2,355,658	\$2,205,658
2. House of Representatives (26)	3,701,192	3,451,192
3. Legislative Services Division Feed Bill (22)	643,554	578,554

(2) *The following amounts are appropriated from the general fund for fiscal year 2003 for the operation of the 58th legislature:*

1. Senate (25)	\$150,000
2. House of Representatives (26)	250,000
3. Legislative Services Division Feed Bill (22)	65,000

Section 3. Effective date. [This act] is effective on passage and approval.

Approved January 31, 2003

CHAPTER NO. 2

[HB 21]

AN ACT DESIGNATING WOLF POINT, MONTANA, AS THE SITE OF THE MONTANA COWBOY HALL OF FAME AND DIRECTING THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF TRANSPORTATION TO IDENTIFY IT AS SUCH ON OFFICIAL STATE MAPS.

WHEREAS, Wolf Point has the oldest continually held rodeo in Montana; and

WHEREAS, Montana Professional Rodeo Cowboys Association (PRCA) yearend winners and Montana PRCA Circuit Finals contestants have chosen

the Wolf Point Wild Horse Stampede Committee 12 times in the last 13 years as the Montana Pro Rodeo Committee of the Year; and

WHEREAS, Wolf Point is home of rodeo legend stock contractor, Marvin Brookman, who is currently the oldest active PRCA cardholder in the United States; and

WHEREAS, according to local history that is provided in Marvin Presser's book *Wolf Point: A City of Destiny*, it was during the midteens of the 1900s that "local Cowboys and Indians would hold an impromptu gathering and stage a little afternoon rodeo on the downtown dirt streets on a summer afternoon"; and

WHEREAS, Wolf Point is located on the stretch of U.S. Highway 2, a coast-to-coast artery of the United States, that was originally part of the Theodore Roosevelt International Highway when it was first constructed in 1919; and

WHEREAS, local history reflects traditions of the Indian horsemen, along with some of the largest cattle and horse ranches in Montana; and

WHEREAS, Wolf Point is the birthplace of renowned Hollywood movie star, trick-rope performer, and American cowboy hero Montie Montana; and

WHEREAS, the hall of fame would be housed in conjunction with a museum facility currently in development along U.S. Highway 2 in Wolf Point.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana cowboy hall of fame — Wolf Point. (1) The city of Wolf Point is designated as the site of the Montana cowboy hall of fame.

(2) The department of commerce and the department of transportation shall identify the city of Wolf Point as the location of the Montana cowboy hall of fame on official state maps.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Approved February 3, 2003

CHAPTER NO. 3

[HB 309]

AN ACT PROVIDING A POPULATION CRITERION FOR THE REDISTRICTING OF LEGISLATIVE DISTRICTS; PROHIBITING THE SECRETARY OF STATE FROM ACCEPTING A PLAN NOT IN COMPLIANCE WITH CERTAIN CRITERIA; AMENDING SECTION 5-1-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Redistricting criteria. (1) In the drawing of legislative districts, the districting and apportionment commission shall comply with the following criteria:

- (a) the districts must be compact and contiguous; and
- (b) the districts must be as equal as practicable.

(2) For the purposes of this section, "as equal as practicable" means within a plus or minus 1% relative deviation from the ideal population of a district as calculated from information provided by the federal decennial census.

Section 2. Section 5-1-111, MCA, is amended to read:

"5-1-111. Final plan — dissolution of commission. (1) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it shall become law.

(2) Within 30 days after receiving the legislative redistricting plan and the legislature's recommendations, the commission shall file its final legislative redistricting plan with the secretary of state ~~and it shall become law.~~ *The secretary of state may not accept any plan that does not comply with the criteria in [section 1]. Upon acceptance of a plan by the secretary of state, the plan is considered filed and becomes law.*

(3) ~~Upon the acceptance and filing of both plans, the commission shall be dissolved.~~

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 1, part 1, and the provisions of Title 5, chapter 1, part 1, apply to [section 1].

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to any legislative redistricting plan of the districting and apportionment commission that was not filed with the secretary of state on [the effective date of this act].

Approved February 4, 2003

CHAPTER NO. 4

[SB 258]

AN ACT PROVIDING FOR THE ASSIGNMENT OF HOLDOVER SENATORS TO NEW DISTRICTS FOR THE REMAINDER OF THEIR TERMS IN THE SESSION DURING WHICH THE LEGISLATIVE REDISTRICTING PLAN IS SUBMITTED TO THE LEGISLATURE FOR RECOMMENDATIONS; PROHIBITING THE DISTRICTING AND APPORTIONMENT COMMISSION FROM ASSIGNING HOLDOVER SENATORS TO NEW DISTRICTS; PROVIDING FOR THE ASSIGNMENT OF HOLDOVER SENATORS TO DISTRICTS BY JOINT RESOLUTION; PROVIDING THAT THE ASSIGNMENT OF A HOLDOVER SENATOR BE BASED UPON THE GREATEST PERCENTAGE OF POPULATION IN THE NEW DISTRICT THAT VOTED FOR THE SENATOR IN THE PRIOR ELECTION AND THE SENATOR'S RESIDENCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Assignment of holdover senators. (1) In the session in which the legislative redistricting plan is submitted to the legislature for recommendations, the legislature, by joint resolution, shall assign holdover senators to a district for the remainder of those senators' terms. The districting and apportionment commission may not assign holdover senators to districts for the remainder of those senators' terms. The assignments must occur after the plan becomes law.

(2) In making the assignments provided for in subsection (1), the legislature, if possible, shall assign a holdover senator to a district based upon the greatest percentage of population in the new district that voted for the senator in the prior election and the senator's residence.

(3) For the purposes of this section, a holdover senator is a senator who is not required to seek election at the general election held immediately following the districting plan becoming law.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 1, part 1, and the provisions of Title 5, chapter 1, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 4, 2003

CHAPTER NO. 5

[HB 188]

AN ACT CREATING A TRESPASS EXCEPTION FOR DEPARTMENT OF REVENUE PROPERTY VALUATION EMPLOYEES ACTING WITHIN THE COURSE AND SCOPE OF THEIR DUTIES; REQUIRING THAT THE DEPARTMENT PUBLISH NOTICE OF INTENT TO ENTER ONTO PROPERTY FOR APPRAISAL AND AUDIT PURPOSES; REQUIRING THAT THE DEPARTMENT MAIL A ONE-TIME NOTICE TO OWNERS OF PRIVATE POSTED LAND THAT DEPARTMENT EMPLOYEES MAY ENTER THE PROPERTY FOR APPRAISAL AND AUDIT PURPOSES; REQUIRING THAT COUNTY TREASURERS ANNUALLY PROVIDE NOTICE TO LANDOWNERS THAT DEPARTMENT EMPLOYEES MAY ENTER PRIVATE LAND FOR APPRAISAL AND AUDIT PURPOSES; PROVIDING THAT PROPERTY VALUATION EMPLOYEES MAY ENTER PROPERTY UNDER SPECIFIC GUIDELINES; ALLOWING THE LANDOWNER TO REQUIRE THAT THE LANDOWNER OR LANDOWNER'S AGENT BE PRESENT WHEN DEPARTMENT EMPLOYEES ENTER THE LANDOWNER'S PROPERTY; ALLOWING THE DEPARTMENT TO ESTIMATE THE VALUE OF PROPERTY WHEN ACCESS IS DENIED; PROHIBITING, UNDER CERTAIN CONDITIONS, A COUNTY TAX APPEAL BOARD AND THE STATE TAX APPEAL BOARD FROM ADJUSTING ESTIMATED PROPERTY VALUES; AMENDING SECTION 45-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Requirements for entry on property by property valuation staff employed by department — authority to estimate value of property not entered — rules. (1) Subject to the conditions and restriction

of this section, the provisions of 45-6-203 do not apply to property valuation staff employed by the department and acting within the course and scope of the employees' official duties.

(2) A person qualified under subsection (1) may enter private land to appraise or audit property for property tax purposes.

(3) (a) No later than November 30 of each year, the department shall publish in a newspaper of general circulation in each county a notice that the department may enter property for the purpose of appraising or auditing property.

(b) The published notice must indicate:

(i) that a landowner may require that the landowner or the landowner's agent be present when the person qualified in subsection (1) enters the land to appraise or audit property;

(ii) that the landowner shall notify the department in writing of the landowner's requirement that the landowner or landowner's agent be present; and

(iii) that the landowner's written notice must be mailed to the department at an address specified and be postmarked not more than 30 days following the date of publication of the notice. The department may grant a reasonable extension of time for returning the written notice.

(4) The written notice described in subsection (3)(b)(ii) must be legible and include:

(a) the landowner's full name;

(b) the mailing address and property address; and

(c) a telephone number at which an appraiser may contact the landowner during normal business hours.

(5) When the department receives a written notice as described in subsection (4), the department shall contact the landowner or the landowner's agent to establish a date and time for entering the land to appraise or audit the property.

(6) If a landowner or the landowner's agent prevents a person qualified under subsection (1) from entering land to appraise or audit property or fails or refuses to establish a date and time for entering the land pursuant to subsection (5), the department shall estimate the value of the real and personal property located on the land.

(7) A county tax appeal board and the state tax appeal board may not adjust the estimated value of the real or personal property determined under subsection (6) unless the landowner or the landowner's agent gives permission to the department to enter the land to appraise or audit the property.

(8) A person qualified under subsection (1) who enters land pursuant to this section shall carry on the person identification sufficient to identify the person and the person's employer and shall present the identification upon request.

(9) The authority granted by this section does not authorize entry into improvements, personal property, or buildings or structures without the permission of the owner or the owner's agent.

(10) Vehicular access to perform appraisals and audits is limited to established roads and trails, unless approval for other vehicular access is granted by the landowner.

(11) The department shall adopt rules that are necessary to implement [sections 1 and 2]. The rules must, at a minimum, establish procedures for granting a reasonable extension of time for landowners to respond to notices from the department.

Section 2. Notice appraisal and audit — statement of rights. Each county treasurer shall include in the notice required by 15-16-101(1), 15-16-119, and 15-24-202 a statement that property valuation staff employed by the department may enter private property to appraise or audit property for property tax purposes as provided in [section 1]. The notice must include a statement of landowner rights in words substantially similar to: "You or your agent have the right to be present when your property is appraised or audited. If you wish to make an appointment for the next tax year, call [insert local department of revenue office phone number] or write your local department of revenue office between December 1 and December 31 of this year."

Section 3. Notification appraisal and audit. For property identified by the department of revenue as posted private land pursuant to 45-6-201, the department shall, not later than [60 days after the effective date of this act], mail notice to the owner of the posted private land that property valuation staff employed by the department may enter the property to appraise or audit property for property tax purposes. The notice must include the provisions of [section 1(3) and (4)].

Section 4. Section 45-6-203, MCA, is amended to read:

"45-6-203. Criminal trespass to property. (1) Except as provided in [section 1] and 70-16-111, a person commits the offense of criminal trespass to property if the person knowingly:

- (a) enters or remains unlawfully in an occupied structure; or
- (b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 7, part 1, and the provisions of Title 15, chapter 7, part 1, apply to [sections 1 and 2].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Termination. [Section 3] terminates September 1, 2003.

Approved February 6, 2003

CHAPTER NO. 6

[HB 16]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FIRE SUPPRESSION COSTS FOR THE BIENNIUM ENDING JUNE 30, 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation — time limits. (1) Subject to subsection (2), up to \$6,571,766 is appropriated from the general fund to the department of natural resources and conservation forestry program.

(2) The appropriation contained in subsection (1) is intended to provide the necessary funding for the supplemental fiscal year transfer for fire costs in fiscal year 2002 and for fire costs in the fiscal year ending June 30, 2003. The unspent balance of the appropriation must revert to the general fund.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 11, 2003

CHAPTER NO. 7

[HB 25]

AN ACT PROVIDING THAT A PRIMARY ELECTION CANDIDATE MAY FILE A DECLARATION FOR ONLY ONE PARTY'S NOMINATION; AND AMENDING SECTION 13-10-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall ~~send~~ *file* a declaration for nomination ~~to~~ *with* the secretary of state or election administrator. Each candidate for governor shall ~~send~~ *file* a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. *For a partisan election, an elector may not file a declaration for more than one party's nomination.*

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature

changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.”

Approved February 11, 2003

CHAPTER NO. 8

[HB 31]

AN ACT REVISING FERTILIZER LAWS; INCREASING FERTILIZER REGISTRATION FEES; REQUIRING ANALYTICAL INFORMATION WITH FERTILIZER REGISTRATION APPLICATIONS; REVISING THE MONTANA COMMERCIAL FERTILIZER LAWS TO ALLOW FOR AN INCREASE IN THE INSPECTION FEE PER TON OF ANHYDROUS AMMONIA AND TO PROVIDE THE MINIMUM AND MAXIMUM AMOUNTS TO WHICH THE FEE MAY BE ADJUSTED BY RULE; ELIMINATING THE MANDATORY HEARING BEFORE INSPECTION FEES CAN BE CHANGED BY RULE; AMENDING SECTIONS 80-10-201 AND 80-10-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-10-201, MCA, is amended to read:

“80-10-201. Registration. (1) Each brand and grade of fertilizer and each soil amendment except unmanipulated animal and vegetable manures ~~shall~~ *must* be registered by or on behalf of the manufacturer before distribution in this state. The application for registration ~~shall~~ *must* be submitted to the department on a form furnished or approved by the department and ~~shall~~ *must* be accompanied by a nonrefundable fee of ~~\$10~~ \$20 per grade for each fertilizer and for each soil amendment with exception of specialty fertilizers, which ~~shall~~ *must* be registered at a nonrefundable fee of ~~\$25~~ \$35 each. Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year.

(2) (a) The application for registration ~~shall~~ *must* include:

(i) the brand and grade;

(ii) the guaranteed analysis;

(iii) the source of each plant food element guaranteed;

(iv) the name and address of the registrant;

(v) a copy or facsimile of each label and of promotional material when requested by the department-; *and*

(vi) *analytical information on nutrient ingredients and nonnutrient ingredients as required by rule.*

(b) ~~Further, the~~ The department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable by the director of the agricultural experiment station or his designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product ~~which that~~ is not generally recognized as having the values claimed at the use rates recommended.

(3) A distributor may not be required to register any brand or grade of commercial fertilizer ~~which that~~ is already registered under this section by another person.

(4) ~~No~~ A manufacturer may *not* reregister ~~his~~ a product until full payment of the assessment fees provided for in 80-10-103 and 80-10-207 has been received by the department.”

Section 2. Section 80-10-207, MCA, is amended to read:

“80-10-207. Fees. (1) (a) A manufacturer registering under 80-10-201(1) shall pay to the department fees on all commercial fertilizer distributed in this state, except specialty fertilizers and unmanipulated animal and vegetable manures, provided that sales to manufacturers or exchanges between them are exempt. The fees are:

(i) *for* inspection of fertilizers other than anhydrous ammonia, 20 cents per ton. The department may by rule ~~after hearing~~ adjust the inspection fee ~~not to exceed a maximum of 25 cents per ton~~ to maintain adequate funding for the administration of this part. *The fee may not be less than 20 cents per ton or more than 25 cents per ton.* A change in fee becomes effective on the first day of a reporting period. All manufacturers must be given notice of a change in fees before the effective date.

(ii) *for* inspection of anhydrous ammonia, ~~20~~ 65 cents per ton. The department may by rule ~~after hearing~~ adjust the anhydrous ammonia inspection fee ~~not to exceed a maximum of 65 cents per ton~~ to maintain adequate funding for the administration and enforcement of part 5 of this chapter. *The fee may not be less than 65 cents per ton or more than \$1.30 per ton.* A change in fee becomes effective on the first day of a reporting period. All registrants and manufacturers of anhydrous ammonia must be given notice of a change in fees before the effective date of the fee adjustment.

(iii) *for* assessment, the fee prescribed in 80-10-103. The assessment fee must be used to fund educational and experimental programs as provided in 80-10-103 through 80-10-106.

(b) If fertilizer or soil amendment material is added to fertilizer for which a fee has been paid under subsection (1)(a), a fee must be paid under that subsection, but only on the added fertilizer or soil amendment.

(2) There must be paid to the department on all soil amendments distributed in this state an inspection fee of 10 cents per ton subject to the following provisions:

(a) sales to manufacturers or exchanges between them are exempt; and

(b) when less than 50 tons of registered soil amendment is sold in a 6-month period, there must be paid to the department a fee of \$5 for each soil amendment for each 6-month period in lieu of the fee of 10 cents per ton. Inspection fees must be used by the department for administration of this part.

(3) (a) (i) Each licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer and unmanipulated manures, to an unlicensed or unregistered person in this state shall file with the department on forms furnished or approved by the department a semiannual statement for the periods ending June 30 and December 31 setting forth the number of net tons of each commercial fertilizer or soil amendment distributed in this state during the 6-month period. The report is due on or before the 30th day of the month following the close of each period.

(ii) Each manufacturer who registers or a person who registers on the manufacturer's behalf a soil amendment or commercial fertilizer in this state, except specialty fertilizer and unmanipulated manures, shall file with the department on forms furnished or approved by the department a monthly statement setting forth the number of net tons of each registered commercial fertilizer and soil amendment distributed in this state during the month and to whom it was distributed. The report is due on or before the 30th day of the following month. The manufacturer or person registering on behalf of the manufacturer shall pay the fees set forth in subsection (1) at that time.

(b) If the tonnage report required by subsection (3)(a)(ii) is not filed and the payment of fees is not made within 30 days after the end of the period, a collection fee amounting to 10% of the amount due but not less than \$10 must be assessed against the manufacturer and the amount of fees due constitutes a debt and becomes the basis of a judgment against the manufacturer.

(4) Except as provided in subsection (5), all fees collected for licenses, registration, and inspection and money collected as penalties must be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the state special revenue fund.

(5) All fees collected under subsection (1)(a)(ii) must be deposited in the state treasury to the credit of the state special revenue fund, anhydrous ammonia account, for the administration and enforcement of part 5 of this chapter and the rules adopted under part 5. The department may direct the board of investments to invest the funds collected under subsection (1)(a)(ii) ~~of this section~~ pursuant to the provisions of 17-6-201. The income from the investment must be deposited in the anhydrous ammonia account in the state special revenue fund."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 11, 2003

CHAPTER NO. 9

[HB 34]

AN ACT PROVIDING THAT THE PURCHASE OF RETAIL INSTALLMENT CONTRACTS ENTERED INTO IN THIS STATE IS SUBJECT TO REGULATION BY THE DEPARTMENT OF ADMINISTRATION; AND AMENDING SECTION 31-1-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-221, MCA, is amended to read:

“31-1-221. Licensing of sales finance companies required. (1) ~~No~~ A person ~~shall~~ *may not* engage in the business of a sales finance company, *including the purchase of retail installment contracts that are entered into* in this state, without a license ~~therefor~~ as provided in this part, except that ~~no~~ a bank, trust company, or savings and loan association authorized to do business in this state ~~shall be~~ *is not* required to obtain a license under this part but shall comply with all of the other provisions of this part.

(2) The application for ~~such~~ a license ~~shall~~ *must* be in writing, under oath, and in the form prescribed by the department. The application ~~shall~~ *must* contain:

- (a) the name of the applicant;
- (b) *the* date of incorporation, if incorporated;
- (c) the address where the business is or is to be conducted and similar information ~~as with regard to~~ any branch office of the applicant;
- (d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and
- (e) ~~such~~ other pertinent information as the department may require.

(3) The license fee for each calendar year or part ~~thereof of a year~~ *shall be the sum of* is \$100 for each place of business of the licensee in this state.

(4) Each license ~~shall~~ *must* specify the location of the office or branch and must be conspicuously displayed there. ~~In case such~~ *If the location* ~~is~~ changed, the department shall endorse the change of location of the license without charge.

(5) Upon the filing of ~~such~~ a license application and the payment of ~~said~~ the license fee, the department shall issue a license to the applicant to engage in the business of a sales finance company ~~under and~~ in accordance with the provisions of this part for a period ~~which shall expire~~ *that expires* December 31 ~~next~~ following the date of ~~its~~ the license's issuance. ~~Such~~ The license ~~shall~~ *is not* be transferable or assignable. ~~No~~ A licensee ~~shall~~ *may not* transact any business provided for by this part under any other name.

(6) Fees collected under this chapter ~~shall~~ *must* be deposited in the state special revenue fund for the use of the department in its supervision function.”

Approved February 11, 2003

CHAPTER NO. 10

[HB 58]

AN ACT PROVIDING THAT UNPAID INDIVIDUAL INCOME TAXES ARE DUE ON OR BEFORE THE DATE REQUIRED FOR FILING A TAX RETURN AND NOT NECESSARILY AT THE TIME OF THE FILING OF THE TAX RETURN; AND AMENDING SECTION 15-30-142, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-142, MCA, is amended to read:

“15-30-142. Returns and payment of tax — penalty and interest — refunds — credits. (1) For both resident and nonresident taxpayers, each

single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than \$1,500, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the tax year of more than \$3,000, as adjusted under the provisions of subsection (7), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must be increased by \$800, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, ~~at the time of filing the return required by this chapter~~ *on or before the date required by this chapter for filing a return*, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by \$1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than \$1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.

(8) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year."

Approved February 11, 2003

CHAPTER NO. 11

[HB 62]

AN ACT REVISING THE STATE APIARY LAWS BY PROVIDING FOR A STATE SPECIAL REVENUE ACCOUNT AND FUNDING SOURCE; FURTHER DEFINING THE TERM "APIARY"; EXPANDING THE DEFINITION OF "PEST"; ESTABLISHING MAXIMUM AND MINIMUM REGISTRATION AND INSPECTION FEES AND ALLOWING THE DEPARTMENT OF AGRICULTURE TO REVISE THESE FEES BY RULE; PROVIDING FOR THE DISPOSITION OF FUNDS RECEIVED AS THE RESULT OF A PENALTY; AMENDING SECTIONS 80-6-101, 80-6-105, 80-6-202, AND 80-6-303, MCA; REPEALING SECTION 80-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. State special revenue account — source of funds. (1) There is an apiary account in the state special revenue fund established in 17-2-102. All funds received by the department under parts 1 through 3 must be deposited in the apiary account.

(2) The department may direct the board of investments to invest the funds collected under subsection (1), pursuant to the provisions of 17-6-201. The interest and income from the investments must be credited to the account provided for in subsection (1).

Section 2. Section 80-6-101, MCA, is amended to read:

"80-6-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Apiary" means a ~~place~~ *location* where one or more colonies of bees are kept or one or more hives containing honeycombs or bee combs are kept.

(2) "Bee diseases" means a disease or abnormal condition of egg, larval, pupal, or adult stages of bees. Specific bee diseases that are subject to regulation under parts 1 through 3 of this chapter must be designated by department rule.

(3) "Bees" means any stage of the bees in the genus *Apis*.

(4) "Colony" means the hive and all equipment used in connection with the hive.

(5) "Department" means the department of agriculture, provided for in 2-15-3001.

(6) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives and includes containers of honey and wax used in an apiary or in transporting bees and their products and apiary supplies.

(7) "Family unit" means two or more persons living together or residing in the same dwelling, house, or other place of residence.

(8) "General apiary" means an apiary other than a pollination apiary, landowner apiary, or hobbyist apiary.

(9) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container or a part of a container, natural or artificial, used as a domicile for bees.

(10) "Hobbyist apiary" means an apiary owned by a hobbyist beekeeper.

(11) "Hobbyist beekeeper" means a person who owns a total of no more than five hives.

(12) "Landowner" means the person who has the use and exclusive possession of the land upon which a landowner apiary is to be registered. However, a person leasing or renting land for the primary purpose of locating or establishing an apiary is not considered a landowner.

(13) "Landowner apiary" means an apiary owned by a landowner as defined in this section.

(14) "Persons" means individuals, associations, partnerships, or corporations.

(15) "Pest" means the African honeybee (*Apis mellifera scutellata*) and those honeybees Africanized by interbreeding with the African honeybee, and any other parasite or predator that attacks the egg, larval, pupal, or adult stages of the honeybee that are subject to regulation under parts 1 through 3 of this chapter as identified by rule of the department.

(16) "Pollination apiary" means an apiary operated for pollination of a commercial seed, fruit, or other commercial agricultural product as provided in 80-6-112."

Section 3. Section 80-6-105, MCA, is amended to read:

"80-6-105. Registration fees. (1) Each year before a certificate of registration may be issued for an apiary, the owner or applicant for the certificate shall pay the department a registration fee. *Except as provided in this subsection, the fee is \$11. The department may adjust the fee by rule to maintain adequate funding for this part. The fee may not be less than \$8 an apiary or more than \$20 an apiary.* ~~in accordance with the following schedule of fees for the total number of colonies owned or possessed:~~

1 to 10 colonies of bees.....	\$ 20
11 to 200 colonies.....	50
201 to 500 colonies.....	80
501 to 1,000 colonies.....	140
1,001 to 3,000 colonies.....	200
3,001 to 5,000 colonies.....	280
5,001 colonies and upward.....	400

(2) If, after registration, additional or new colonies apiary locations are authorized for a registered apiary, fees must be paid by the registrant in accordance with the schedule in subsection (1) for the total number of colonies for that year."

Section 4. Section 80-6-202, MCA, is amended to read:

"80-6-202. Inspection of bees or used beekeeping equipment transported interstate. (1) A person may not transport or bring into the state bees or used beekeeping equipment or containers, including honey to be extracted, unless under a compliance agreement or certified and duly marked as being apparently pest- and disease-free by an official responsible for apiary regulations of the state from which they are being moved. The department must be advised in advance of the date of entry and the destination of the bees or material. Used equipment or bees transported into the state may be

quarantined by the department, in accordance with 80-6-201(1)(c), from the time they enter the state until they have been inspected and found to be apparently free of pests and diseases or until they have been in use while under quarantine for a minimum of 90 days and at least until the following July 1. The beekeeping materials are also subject to quarantine as provided in this section. The department may also inspect and certify as being apparently pest- and disease-free bees or beekeeping equipment to be transported from Montana to a state that requires an inspection in the state of origin.

(2) (a) The costs of making the inspections provided for in subsection (1) must be paid in advance by the owner of the bees or equipment.

(b) Inspection fees for persons without a valid Montana compliance agreement must include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses;

(iii) an hourly rate established by department rule; and

(iv) *except as provided in this subsection (2)(b)(iv), a fee of \$50 \$75 for the issuance of a certificate of health. The department may adjust the fee by rule to maintain adequate funding for this part. The fee may not be less than \$50 or more than \$100.*

(c) Persons transporting bees interstate with a valid Montana compliance agreement shall pay inspection fees that include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses; and

(iii) *except as provided in this subsection (2)(c)(iii), a fee of \$50 \$75 for the issuance of a certificate of health. The department may adjust the fee by rule to maintain adequate funding for this part. The fee may not be less than \$50 or more than \$100.*

(d) If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall so state by public statement. Importation of bees or beekeeping materials, including honey for extracting, from that other state must be denied unless the materials, bees, or honey is first inspected by the department and there is obtained from it a certificate of inspection showing that the materials, bees, or honey is apparently free from pests and contagious or infectious disease. The costs of making the inspection must be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance, and the costs must include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses;

(iii) an hourly rate established by department rule; and

(iv) *except as provided in this subsection (2)(d)(iv), a fee of \$50 \$75 for the issuance of the certificate of inspection. The department may adjust the fee by rule to maintain adequate funding for this part. The fee may not be less than \$50 or more than \$100.*

Section 5. Section 80-6-303, MCA, is amended to read:

“80-6-303. Penalty. (1) A person violating or aiding in the violation of parts 1 through 3 or rules adopted under parts 1 through 3 is subject to one or both of the following penalties:

(a) an administrative civil penalty of not more than \$1,000 for each offense. Assessment of a penalty under this subsection ~~(a)~~ (1)(a) may be made in conjunction with any other warning, order, or administrative action that is issued by the department under this part. The proceeds of an administrative civil penalty must be deposited in the ~~general fund~~ *state special revenue account provided for in [section 1]*.

(b) if the offense is a misdemeanor, a fine of not less than \$25 or more than \$500 or imprisonment in the county jail not exceeding 1 year, or both.

(2) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts of penalties for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under subsection (1)(a). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

(3) This part may not be construed as requiring the department or its representatives to report violations of this part when it is believed that the public interest will be best served by a suitable notice of warning.”

Section 6. Repealer. Section 80-6-302, MCA, is repealed.

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 6, part 3, and the provisions of Title 80, chapter 6, part 3, apply to [section 1].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved February 11, 2003

CHAPTER NO. 12

[HB 69]

AN ACT REVISING LAWS RELATING TO NOTARY PUBLIC PROCESSES AND FORMS; AND AMENDING SECTIONS 1-5-405, 1-5-416, AND 1-5-610, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-5-405, MCA, is amended to read:

“1-5-405. Bond and commission — dates — fees and documents. (1) Each notary public shall submit an application, a signed oath of office, and an official bond in the amount of \$10,000 for each 4-year term of office. The application and bond must be approved by the secretary of state. Upon the approval of the application and the bond, the payment of fees, and the filing in the office of the secretary of state of the official oath of the notary public, the secretary of state may issue a commission.

(2) The effective date of the surety bond and the notary commission must be the same.

(3) All required fees and required and properly completed documents must be submitted to the office of the secretary of state within 30 days before or ~~by~~ *within 30 days after* the effective date of the surety bond.”

Section 2. Section 1-5-416, MCA, is amended to read:

“1-5-416. Powers and duties. (1) A notary public shall:

(a) subject to subsection (2), take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of the proof or acknowledgment, endorsed on or attached to the instrument;

(b) take depositions and affidavits, if the notary is knowledgeable of the applicable legal requirements, and administer oaths and affirmations in all matters incident to the duties of the notary public's office or to be used before any court, judge, officer, or board in this state;

(c) whenever requested and upon payment of the required fees, make and give a certified copy of any record kept or that originated in the notary public's place of employment;

(d) provide and keep an official crimper-type or ink stamp seal, upon which must be engraved the name of the state of Montana and the words “Notarial Seal”, with the name of the notary public exactly as that name appears on the notary's certificate of commission issued by the secretary of state;

(e) authenticate with the notary public's official seal, and the notary's original signature as it appears on the notary's certificate of commission, all official acts. Whenever the notary public signs officially as a notary public, the notary public shall add to the signature the words “Notary Public for the State of Montana, residing at... (stating the name of the *town or city of the* notary public's post office)” and shall endorse upon the instrument the date, showing the month, day, and four-digit year, of the expiration of the notary public's commission.

(f) on every document on which the notary's seal of office is used, type, stamp, or legibly print the notary's name, as shown on the notary's certificate of commission, after or below the original signature of the notary.

(2) A notary public may not:

(a) notarize the notary's own signature;

(b) notarize a document in which the notary is individually named or has an interest from which the notary will directly benefit by a transaction involving the document; or

(c) certify a document issued by a public entity, such as a birth, death, or marriage certificate, unless the notary is employed by the entity issuing or holding the original version of that document.”

Section 3. Section 1-5-610, MCA, is amended to read:

“1-5-610. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by 1-5-416 and 1-5-609(1):

(1) For an acknowledgment in an individual capacity:

State of _____

(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s))

(Seal, if any)

 (Signature of notarial officer)

(Name - typed, stamped, or printed)

 Title (and Rank)

 (Residing at)

[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of _____

(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

(Seal, if any)

 (Signature of notarial officer)

(Name - typed, stamped, or printed)

 Title (and Rank)

 (Residing at)

[My commission expires: _____]

(3) For a verification upon oath or affirmation:

State of _____

(County) of _____

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement)

(Seal, if any)

 (Signature of notarial officer)

(Name - typed, stamped, or printed)

 Title (and Rank)

(Residing at)
[My commission expires: _____]

(4) For witnessing or attesting a signature:

State of _____

(County) of _____

Signed or attested before me on (date) by (name(s) of person(s))

(Signature of notarial officer)

(Seal, if any)

(Name - typed, stamped, or printed)

Title (and Rank)

(Residing at)
[My commission expires: _____]

(5) For attestation of a copy of a document:

State of _____

(County) of _____

I certify that this is a true and correct copy of a document in the possession of

_____.

Dated _____

(Signature of notarial officer)

(Seal, if any)

(Name - typed, stamped, or printed)

Title (and Rank)

(Residing at)
[My commission expires: _____]"

Approved February 11, 2003

CHAPTER NO. 13

[HB 70]

AN ACT CLARIFYING THE PROCEDURE FOR DISMISSAL OF A DEFENDANT'S APPEAL OF A CONVICTION TO THE DISTRICT COURT; AND AMENDING SECTION 46-17-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in subsection (4) and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

(4) A defendant may appeal a justice's court or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure.

(5) *If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon dismissal, the appealed judgment is reinstated and becomes the operative judgment."*

Approved February 11, 2003

CHAPTER NO. 14

[HB 83]

AN ACT GENERALLY REVISING WELL LOG REPORTING REQUIREMENTS; REQUIRING WELL LOG REPORTS TO BE FILED WITH THE MONTANA STATE BUREAU OF MINES AND GEOLOGY; REQUIRING THE WELL LOG REPORT FORM OR FORMAT TO BE SPECIFIED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION IN CONSULTATION WITH THE BOARD OF WATER WELL CONTRACTORS AND THE MONTANA STATE BUREAU OF MINES AND GEOLOGY; AUTHORIZING THE SUBMISSION OF WELL LOG REPORTS IN AN ELECTRONIC FORMAT; AMENDING SECTION 85-2-516, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-516, MCA, is amended to read:

“85-2-516. Well logs. (1) Within 60 days after any well is completed, the driller shall file with the ~~department~~ bureau a well log report.

(2) ~~Except as provided in subsection (3), the well log report must be filed on a form provided specified by the department through its offices in consultation with the board of water well contractors provided for in 2-15-3307 and the bureau.~~

(3) ~~The bureau may allow submission of the well log report in an electronic format that is in accordance with the form specified as provided in subsection (2).~~

(4) ~~The department bureau may return the report for refiling if it is incomplete or incorrect. The department shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology.”~~

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved February 11, 2003

CHAPTER NO. 15

[HB 132]

AN ACT REVISING THE LAWS RELATING TO MUNICIPAL CLASSIFICATION; ALLOWING A CITY WITH A POPULATION OF BETWEEN 9,000 AND 10,000 TO BE EITHER A FIRST-CLASS OR SECOND-CLASS CITY; REMOVING THE REFERENCE TO AN ANNUAL ELECTION WHEN AN ELECTION IS REQUIRED BECAUSE OF RECLASSIFICATION; AMENDING SECTIONS 7-1-4112 AND 7-1-4116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4112, MCA, is amended to read:

“7-1-4112. Exceptions from classification system. Notwithstanding the provisions of 7-1-4111:

(1) *every municipal corporation having a population of more than 9,000 and less than 10,000 may, by resolution adopted by the city council pursuant to 7-1-4114 through 7-1-4118, be either a first-class city or a second-class city;*

~~(1)~~(2) *every municipal corporation having a population of more than 5,000 and less than 7,500 may, by resolution adopted by the city council pursuant to 7-1-4114 through 7-1-4118, be either a second-class city or a third-class city; and*

~~(2)~~(3) *every municipal corporation having a population of more than 1,000 and less than 2,500 may, by resolution adopted by the city or town council, as the case may be, pursuant to 7-1-4114 through 7-1-4118, be either a city or town.”*

Section 2. Section 7-1-4116, MCA, is amended to read:

“7-1-4116. Officers of reclassified municipality. The first election of officers of the new municipal corporation organized under the provisions of 7-1-4114 through 7-1-4118 must be at the first ~~annual~~ municipal election after ~~such proceedings~~ *reclassification*, and the old officers remain in office until the new officers are elected and qualified.”

Section 3. Effective date. [This act] is effective on passage and approval.
Approved February 11, 2003

CHAPTER NO. 16

[HB 153]

AN ACT ALLOWING AN EMPLOYEE OF A STATE OR LOCAL EDUCATIONAL AGENCY THAT IS NOT PROVIDING EDUCATIONAL SERVICES TO A CHILD WITH A DISABILITY TO SERVE AS A SURROGATE PARENT FOR THAT CHILD; AMENDING SECTION 20-7-461, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-461, MCA, is amended to read:

“20-7-461. Appointment and termination of appointment of surrogate parent. (1) A school district or institution that provides education to a child with a disability shall adopt procedures to assign an individual to act as a surrogate parent for a child with a disability whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. The determination of need for a surrogate parent must be made within 10 days of the date on which the school district or its designee or the governing authority of an institution or its designee learns of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days of that determination.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency *that is providing educational services to the child*. The surrogate parent may not have a vested interest that will conflict with the person's representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 45 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent.

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

- (a) a child's parents are identified;
- (b) the location of the parents is discovered;
- (c) the child is no longer a ward of the state; or

(d) the surrogate parent wishes to discontinue the appointment.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 11, 2003

CHAPTER NO. 17

[HB 39]

AN ACT ADOPTING THE MOST RECENT VERSION OF FEDERAL LAWS AND REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, FOR USE BY THE STATE MILITARY FORCES; AND AMENDING SECTION 10-1-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-104, MCA, is amended to read:

“10-1-104. Federal regulations to govern. (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~2001~~ 2003, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~2001~~ 2003, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution of this state and except as otherwise provided by this title or by rule adopted by the department, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code.”

Approved February 13, 2003

CHAPTER NO. 18

[HB 46]

AN ACT INCREASING TO \$40 MILLION THE AUTHORITY TO ISSUE AND SELL GENERAL OBLIGATION BONDS FOR THE STATE'S SHARE OF THE WATER POLLUTION CONTROL STATE REVOLVING FUND PROGRAM; INCREASING TO \$30 MILLION THE AUTHORITY TO ISSUE AND SELL GENERAL OBLIGATION BONDS FOR THE STATE'S SHARE OF THE DRINKING WATER STATE REVOLVING FUND PROGRAM; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTIONS 75-5-1122 AND 75-6-227, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-1122, MCA, is amended to read:

“75-5-1122. Creation of debt. The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed ~~30~~ \$40 million and the issuance and sale of general obligation bonds in this amount for the purpose of providing the state’s share of the program.”

Section 2. Section 75-6-227, MCA, is amended to read:

“75-6-227. Creation of debt. The legislature, through enactment of this section, authorizes the creation of state debt in an amount not to exceed ~~20~~ \$30 million and authorizes the issuance and sale of general obligation bonds in this amount for the purpose of providing the state’s share of the drinking water program.”

Section 3. Two-thirds vote required. Because [sections 1 and 2] authorize the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 4. Effective date. [This act] is effective July 1, 2003.

Approved February 13, 2003

CHAPTER NO. 19

[HB 48]

AN ACT REVISING THE DUTIES OF AN ASSIGNED COUNSEL WHO DETERMINES THAT AN APPEAL IN A CRIMINAL CASE WOULD BE FRIVOLOUS OR WHOLLY WITHOUT MERIT; AND AMENDING SECTION 46-8-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-8-103, MCA, is amended to read:

“46-8-103. Duration of appointment. (1) When counsel has been assigned, the assignment is effective until final judgment, including any proceeding upon direct appeal to the Montana supreme court, unless relieved by order of the court that assigned counsel or that has jurisdiction over the case.

(2) If counsel ~~finds the defendant’s case on appeal to be wholly frivolous,~~ ~~counsel shall advise the court of that fact and request~~ *determines that an appeal would be frivolous or wholly without merit, counsel shall file a motion with the court requesting permission to withdraw. The motion must attest that counsel has concluded that an appeal would be frivolous or wholly without merit after reviewing the entire record and researching applicable statutes, case law, and rules and that the defendant has been advised of counsel’s decision and of the defendant’s right to file a response. The request* motion to withdraw must be accompanied by a memorandum ~~referring to anything in the record that might arguably support the appeal~~ *discussing any issues that arguably support an appeal. The memorandum must include a summary of the procedural history of the case and any jurisdictional problems with the appeal, together with appropriate citations to the record and to the pertinent statutes, case law, and procedural rules bearing upon each issue discussed in the memorandum. Upon filing the motion and memorandum with the court, counsel’s certificate of mailing must certify that copies of each filing were mailed to the local county attorney, the attorney general’s office, and the defendant. The defendant is*

entitled to receive a copy of counsel's memorandum and to file a reply response with the court."

Approved February 13, 2003

CHAPTER NO. 20

[HB 68]

AN ACT REQUIRING OBEDIENCE TO THE TRAFFIC DIRECTION OF FLAG PERSONS AND CROSSING GUARDS; AND AMENDING SECTIONS 61-8-102 AND 61-8-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-102, MCA, is amended to read:

"61-8-102. Uniformity of interpretation. ~~This Interpretation of this chapter shall in this state must be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it as consistent as possible with the interpretation of similar laws in other states."~~

Section 2. Section 61-8-105, MCA, is amended to read:

"61-8-105. Obedience to peace officers, highway patrol officers, flag persons, crossing guards, and public safety workers. A person may not willfully fail or refuse to comply with a lawful order or direction of a peace officer, ~~highway patrol officer,~~ *flag person, crossing guard,* or public safety worker pertaining to the use of the highways by traffic. For purposes of this section:

(1) "peace officer" has the meaning provided in 7-32-303; and

(2) "public safety worker" means a person who is authorized to provide assistance at the scene of an incident that requires traffic control and who is either a member of a paid or volunteer fire department, an emergency medical service provider, a member of a search and rescue team, or a civilian accident investigator appointed by a law enforcement agency."

Approved February 13, 2003

CHAPTER NO. 21

[HB 78]

AN ACT TRANSFERRING AUTHORITY FOR APPROVING THE CONDUCT OF SCHOOL ON SATURDAY FROM THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO THE SCHOOL DISTRICT TRUSTEES; AMENDING SECTIONS 20-1-303, 20-3-106, AND 20-3-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-303, MCA, is amended to read:

"20-1-303. Conduct of school on Saturday or Sunday prohibited — exception. Except as provided *in this section,* pupil instruction ~~shall~~ may not be conducted on Saturday or Sunday. In emergencies, pupil instruction may be conducted on a Saturday when it is approved by the ~~superintendent of public~~

~~instruction~~ trustees of the school district in accordance with the policies adopted by the board of public education.”

Section 2. Section 20-3-106, MCA, is amended to read:

“20-3-106. Supervision of schools — powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

- (1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;
- (2) issue, renew, or deny teacher certification and emergency authorizations of employment;
- (3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;
- (4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;
- (5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;
- (6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;
- (7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;
- (8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;
- (9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);
- (10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;
- (11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;
- (12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;
- (13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;
- (14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;
- (15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

~~(17) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;~~

~~(18)~~ (17) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

~~(19)~~ (18) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

~~(20)~~ (19) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

~~(21)~~ (20) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

~~(22)~~ (21) as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

~~(23)~~ (22) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

~~(24)~~ (23) administer the traffic education program in accordance with the provisions of 20-7-502;

~~(25)~~ (24) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

~~(26)~~ (25) review school building plans and specifications in accordance with the provisions of 20-6-622;

~~(27)~~ (26) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

~~(28)~~ (27) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

~~(29)~~ (28) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

~~(30)~~ (29) administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

~~(31)~~ (30) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education.”

Section 3. Section 20-3-324, MCA, is amended to read:

“20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or

rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) subject to 15-10-420, establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(26) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

(27) *approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303; and*

~~(27)~~ (28) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.”

Section 4. Effective date. [This act] is effective on passage and approval.

Approved February 13, 2003

CHAPTER NO. 22

[HB 84]

AN ACT REVISING AND CLARIFYING THE OFFENSE OF MITIGATED DELIBERATE HOMICIDE TO RESOLVE THE CONFUSION THAT ARISES

IN TRYING THE OFFENSE; AMENDING SECTION 45-5-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-103, MCA, is amended to read:

“45-5-103. Mitigated deliberate homicide. (1) A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor’s situation.

~~(2) It is an affirmative defense that the defendant acted under the influence of extreme mental or emotional stress as provided in subsection (1). This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and must be proved by the defendant by a preponderance of the evidence.~~

~~(3)(2) Mitigated deliberate homicide is not an a lesser included offense of deliberate homicide as defined in 45-5-102(1)(b)(a), but is not a lesser included offense of deliberate homicide as defined in 45-5-102(1)(b).~~

(3) Mitigating circumstances that reduce deliberate homicide to mitigated deliberate homicide are not an element of the reduced crime that the state is required to prove or an affirmative defense that the defendant is required to prove. Neither party has the burden of proof as to mitigating circumstances, but either party may present evidence of mitigation.

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.”

Section 2. Applicability. [This act] applies to offenses committed after [the effective date of this act].

Approved February 13, 2003

CHAPTER NO. 23

[HB 23]

AN ACT ALLOWING THE USE OF THE PRIOR 3-YEAR AVERAGE ENROLLMENT TO CALCULATE REVERSIONS FOR FUNDED RESIDENT ENROLLMENT GROWTH IN COMMUNITY COLLEGES; AMENDING SECTION 17-7-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-142, MCA, is amended to read:

“17-7-142. Calculation of reversions for funded resident enrollment growth in Montana university system and community colleges. (1) The reversion calculation in this section is effective only in those years when the legislature funds resident enrollment growth based upon resident enrollment projections and requires a reversion by the Montana university system or a community college if the resident enrollment projections are not met.

(2) The reversion must be calculated based upon the marginal funding for each resident FTE identified in the general appropriations act.

(3) The total reversion is calculated based upon the difference between the FTE resident enrollment projection and the actual FTE resident enrollment or the FTE resident enrollment projection and the prior 3-year average FTE resident enrollment, whichever is lower.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 14, 2003

CHAPTER NO. 24

[HB 35]

AN ACT PROVIDING A PUBLIC EMPLOYMENT HIRING PREFERENCE FOR ELIGIBLE FORMER AND ACTIVE MEMBERS OF THE MONTANA ARMY AND AIR NATIONAL GUARD; AMENDING SECTION 39-29-101, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-29-101, MCA, is amended to read:

“39-29-101. Definitions. For the purposes of this chapter, the following definitions apply:

~~(1) “Active duty” means full time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.~~

~~(2)~~(1) “Armed forces” means the United States:

(a) United States army, navy, air force, marine corps, and coast guard; ~~and~~

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs; *and*

(c) Montana army and air national guard.

~~(3)~~(2) “Disabled veteran” means a person:

(a) whether or not the person is a veteran as defined in this section, who was separated under honorable conditions from active military duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a law administered by the department of veterans affairs, ~~or~~ a military department, *or the state of Montana*; or

(b) who has received a purple heart medal.

~~(4)~~(3) “Eligible relative” means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:

(i) the mother’s spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried.

(4) "Military duty" means duty with military pay and allowances in the armed forces.

(5) (a) "Position" means a position occupied by a permanent, temporary, or seasonal employee, as defined in 2-18-101, for the state or a similar permanent, temporary, or seasonal employee with a public employer other than the state.

(b) The term does not include:

~~(a)~~(i) a state or local elected office;

~~(b)~~(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

~~(c)~~(iii) appointment by an elected official to a public office if the appointment is provided for by law;

~~(d)~~(iv) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

~~(e)~~(v) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) (a) "Under honorable conditions" means a discharge or separation from ~~active~~ military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges.

(b) ~~but~~ The term does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active *federal military* duty in the armed forces after having served more than 180 consecutive days, other than for training; ~~or~~

(b) as a member of a reserve component under an order of ~~active~~ *federal* duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304

served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions; or

(c) *is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of 6 years service in the armed forces, the last 3 years of which have been served in the Montana army or air national guard.*

Section 2. Applicability. [This act] applies to positions of public employment that are subject to the provisions of [this act] that are open for employment on or after [the effective date of this act].

Approved February 13, 2003

CHAPTER NO. 25

[HB 43]

AN ACT ELIMINATING THE REQUIREMENT THAT ASBESTOS CONTROL PERMIT FEES FOR EACH ANNUAL PERMIT REFLECT ACTUAL COSTS FOR THAT PERMIT; PROVIDING THAT FEES MUST BE COMMENSURATE WITH COSTS OF PERMIT ISSUANCE AND ADMINISTRATION; AMENDING SECTIONS 75-2-503 AND 75-2-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-503, MCA, is amended to read:

“75-2-503. Rulemaking authority — issuance of permits. (1) The department shall, subject to the provisions of 75-2-207, adopt rules establishing standards and procedures for accreditation of asbestos-related occupations and control of the work performed by persons in asbestos-related occupations. The rules must be consistent with federal law and include but are not limited to:

- (a) standards for training course review and approval;
- (b) standards for accreditation of applicants for asbestos-related occupations;
- (c) examination requirements for accreditation of applicants for asbestos-related occupations;
- (d) requirements for renewal of accreditation, including periodic refresher courses;
- (e) revocation of accreditation;
- (f) inspection requirements for asbestos projects and asbestos-related occupations credentials;
- (g) criteria to determine whether and what type of control measures are necessary for an asbestos project and whether a project is completed in a manner sufficient to protect public health, including criteria setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a structure is necessary may not be based solely upon the results of airborne asbestos testing.
- (h) requirements for issuance of asbestos project permits and conditions that permitholders shall meet;

- (i) standards for seeking injunctions, criminal and civil penalties, or emergency actions;
 - (j) advance notification procedures and issuance of permits for asbestos projects; and
 - (k) fees, which must be commensurate with costs, for:
 - (i) review and approval of training courses;
 - (ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related occupation;
 - (iii) issuance *and administration* of asbestos project permits, *including annual asbestos project permits for facilities*; and
 - (iv) requested inspections of asbestos projects.
- (2) For asbestos projects having a cost of \$3,000 or less, the department shall issue asbestos project permits within 7 calendar days following the receipt of a properly completed permit application and the appropriate fee.”

Section 2. Section 75-2-504, MCA, is amended to read:

“75-2-504. Facility permits—fee. (1) The department shall provide by rule a procedure for the issuance of an annual asbestos project permit to any facility that has an asbestos health and safety program meeting department criteria and that continuously employs accredited asbestos workers. This permit allows a facility to conduct asbestos projects within the confines of the facility’s controlled area during the period for which the permit is in force. The provisions of this permit may not preclude state and federal requirements for asbestos project notification.

~~(2) The fee for a facility permit must reflect the actual cost of the department’s application review, permit issuance, and facility inspections.”~~

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 13, 2003

CHAPTER NO. 26

[HB 44]

AN ACT PROVIDING THAT CERTAIN MEMBERS OF THE PUBLIC EMPLOYEES’, HIGHWAY PATROL OFFICERS’, SHERIFFS’, GAME WARDENS’ AND PEACE OFFICERS’, MUNICIPAL POLICE OFFICERS’, FIREFIGHTERS’ UNIFIED, OR JUDGES’ RETIREMENT SYSTEMS WITH AT LEAST 5 YEARS OF SERVICE CREDIT MAY PURCHASE MILITARY SERVICE FOR THE ACTUARIAL COST OF THE SERVICE; PROVIDING THAT MILITARY SERVICE PURCHASED IN THE SHERIFFS’ AND FIREFIGHTERS’ UNIFIED RETIREMENT SYSTEMS IS COUNTED AS MEMBERSHIP SERVICE; AMENDING SECTIONS 19-3-503, 19-6-801, 19-7-803, 19-7-804, 19-8-901, 19-9-403, AND 19-13-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-503, MCA, is amended to read:

“19-3-503. Application to purchase military service. (1) (a) Except as provided in subsection (2) and subject to 19-3-514, a member with at least ~~40~~ 5

years of *membership service credit* may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

(b) To purchase this service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(2) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 2. Section 19-6-801, MCA, is amended to read:

"19-6-801. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-6-805, ~~a~~ *an eligible* member ~~with at least 15 years of service credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service:

(a) a member *with at least 15 years of service credit and* who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The member may not purchase more military service under this subsection (2)(a) than the member has service credit in excess of 15 years.

(b) a member *with at least 5 years of membership service* who is covered by 19-6-710 shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.”

Section 3. Section 19-7-803, MCA, is amended to read:

“19-7-803. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-7-805, a member with at least ~~15~~ 5 years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member’s active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the member’s military service, based on the system’s most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

~~(4) Military service purchased under this section is not membership service and may not be used in determining the member’s eligibility for a service retirement benefit.”~~

Section 4. Section 19-7-804, MCA, is amended to read:

“19-7-804. Application to purchase additional service. (1) Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 additional year of service credit for each 5 years of membership service.

(2) To purchase service under this section, a member shall pay the actuarial cost of the service in the sheriffs’ retirement system, as determined by the board, based on the system’s most recent actuarial valuation.

~~(3) Service purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803.~~

~~(4)~~(3) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.”

Section 5. Section 19-8-901, MCA, is amended to read:

“19-8-901. Application to purchase military service. (1) (a) Except as otherwise provided in this section and subject to 19-8-906, a member with at least ~~15~~ 5 years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member’s active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(b) To purchase this military service, the member shall pay the actuarial cost of the member’s military service, based on the system’s most recent actuarial valuation as determined by the board.

(2) A member is not eligible to purchase military service under this section if the member:

- (a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;
- (b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or
- (c) is eligible to receive credit for that service in any other retirement system or plan.”

Section 6. Section 19-9-403, MCA, is amended to read:

“19-9-403. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-9-406, a member with at least ~~15~~ 5 years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member’s active duty service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the member’s military service, based on the system’s most recent actuarial valuation.

~~(3) The member may not purchase more military service than the member’s years of membership service in excess of 15 years.~~

~~(4)~~(3) A member is not eligible to purchase military service under this section if the member:

- (a) has retired from active duty in the armed forces of the United States with a military retirement benefit based on that military service;
- (b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or
- (c) is eligible to receive credit for that service in any other retirement system or plan.”

Section 7. Section 19-13-403, MCA, is amended to read:

“19-13-403. Application to purchase military service. (1) (a) Except as otherwise provided in this section and subject to 19-13-406, a member with at least ~~15~~ 5 years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member’s active duty service in the armed forces of the United States for the purpose of calculating retirement benefits.

(b) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system’s most recent actuarial valuation.

~~(2) A member may not purchase more military service than the member’s years of membership service in excess of 15 years.~~

~~(3)~~(2) A member is not eligible to purchase military service under this section if the member:

- (a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;
- (b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or
- (c) is eligible to receive credit for that service in any other retirement system or plan.

~~(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit."~~

Section 8. Application to purchase military service credit. (1) Except as otherwise provided in this section and subject to [section 9], a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

Section 9. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-5-409 and [section 8].

Section 10. Codification instruction. [Sections 8 and 9] are intended to be codified as an integral part of Title 19, chapter 5, part 4, and the provisions of Title 19, chapter 5, part 4, apply to [sections 8 and 9].

Section 11. Effective date. [This act] is effective July 1, 2003.

Approved February 14, 2003

CHAPTER NO. 27

[HB 53]

AN ACT SUBSTITUTING THE DETENTION CENTER FOR THE COURT AS THE ENTITY THAT MUST NOTIFY THE VICTIM WHEN A PERSON ACCUSED OF A VIOLATION OF SECTION 45-5-206, 45-5-220, OR 45-5-626, MCA, IS ADMITTED TO BAIL; AND AMENDING SECTION 46-9-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-9-108, MCA, is amended to read:

"46-9-108. Conditions upon defendant's release — notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that

the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol, or *use or possess* any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-206, 45-5-220, or 45-5-626 is admitted to bail, the ~~court~~ *detention center* shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Approved February 13, 2003

CHAPTER NO. 28

[HB 102]

AN ACT ELIMINATING THE REQUIREMENT THAT MONEY RECEIVED FROM THE FEDERAL GOVERNMENT BE DEPOSITED IN THE RADON CONTROL ACCOUNT; AMENDING SECTION 75-3-607, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-3-607, MCA, is amended to read:

"75-3-607. Radon control account. (1) There is a radon control account in the state special revenue fund. There must be deposited in the account all money received from any loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of this part that are received from ~~the federal government and~~

~~from other sources~~, public or private sources, except for money received from the federal government

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the program established under this part.”

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved February 13, 2003

CHAPTER NO. 29

[HB 162]

AN ACT INCREASING THE VIDEO GAMBLING MACHINE ANNUAL PERMIT FEE; INCREASING THE AMOUNT OF THE FEE THAT IS USED BY THE DEPARTMENT OF JUSTICE TO ADMINISTER THE VIDEO GAMBLING MACHINE LAW; AMENDING SECTION 23-5-612, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-612, MCA, is amended to read:

“23-5-612. Machine permits — fee. (1) The department, upon payment of the fee provided in subsection (2) and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) (a) The department shall charge an annual permit fee of ~~\$200~~ \$220 for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(b) If the person holding the gambling operator’s license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator’s license and if a machine transfer processing fee of \$25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall deposit ~~50%~~ \$120 of the ~~total~~ annual permit fee or for a prorated fee shall deposit \$90 for three quarters, \$60 for two quarters, and \$30 for one quarter collected under subsection (2)(a) and 100% of the machine transfer processing fee collected under subsection (2)(b) in the state special revenue fund for purposes of administering this part and for other purposes provided by law. The balance of the fee collected under subsection (2)(a) must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury.”

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved February 13, 2003

CHAPTER NO. 30

[HB 167]

AN ACT GENERALLY REVISING PUBLIC RECORDS MANAGEMENT LAWS; REVISING THE DEFINITION OF "PUBLIC RECORDS" WITH RESPECT TO THE RETENTION AND STORAGE OF STATE AND LOCAL GOVERNMENT MATERIALS; AUTHORIZING THE STORAGE OF PERMANENT PUBLIC RECORDS AT LOCATIONS OTHER THAN THE STATE ARCHIVES OR STATE RECORDS CENTER; REQUIRING EACH STATE AGENCY TO DESIGNATE AN AGENCY RECORDS CUSTODIAN; AND AMENDING SECTIONS 2-6-202, 2-6-206, 2-6-211, 2-6-213, AND 2-6-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-202, MCA, is amended to read:

"2-6-202. Definitions. As used in this part, the following definitions apply:

(1) (a) "Public records" includes:

(i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including ~~all~~ copies of the record *required by law to be kept as part of the official record*, regardless of physical form or characteristics, that:

(A) has been made or received by a state agency ~~in connection with~~ *to document* the transaction of official business;

(B) *is a public writing of a state agency pursuant to 2-6-101(2)(a); and preserved for informational value or as evidence of a transaction*

(C) *is designated by the state records committee for retention pursuant to this part; and*

(ii) all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

(b) The term includes electronic mail sent or received in connection with the transaction of official business.

(c) *The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication.*

(2) "State records committee" or "committee" means the state records committee provided for in 2-15-1013."

Section 2. Section 2-6-206, MCA, is amended to read:

"2-6-206. Protection and storage of essential records. (1) In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the executive branch shall designate certain public records as essential records needed for an emergency or for the reestablishment of normal operations after ~~any such~~ *the* emergency. A list of ~~such~~ *essential* records ~~shall~~ *must* be forwarded to the secretary of state. The list ~~shall~~ *must* be reviewed from time to time by the elected or appointed officers to ~~insure~~ *ensure* its accuracy. Any changes or revisions ~~shall~~ *must* be forwarded to the secretary of state.

(2) Each elected and appointed officer of state government shall ~~insure~~ *ensure* that the security of essential records is accomplished by the most economical means possible. Protection *and storage* of essential records may be by vaulting, planned or natural dispersal of copies, storage in the state archives *or in an alternative location provided pursuant to 2-6-211(2)*, or any other method approved by the secretary of state.

(3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other methods approved by the secretary of state."

Section 3. Section 2-6-211, MCA, is amended to read:

"2-6-211. Transfer and storage of public records. (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government ~~which that~~ may be abolished or discontinued ~~shall must~~ be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if ~~such the~~ records are considered to have permanent administrative or historical value.

(2) *Subject to approval by the secretary of state pursuant to 2-6-206, the state records center and the state archives may store transferred permanent public records in locations other than in the buildings occupied by the state records center or the state archives when it is in the best interests of the state.*

~~(2)~~(3) When records are transferred to the state records center, the transferring agency ~~so doing loses none of~~ *does not lose* its rights of control and access. The state records center is only a custodian of the agency records, and access ~~will is only be~~ by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

~~(3)~~(4) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the secretary of state and request a change in the schedule."

Section 4. Section 2-6-213, MCA, is amended to read:

"2-6-213. Agency responsibilities and transfer schedules. Each executive branch agency of state government shall administer its records management function and shall:

(1) coordinate all aspects of the agency records management function;

(2) manage the inventorying of all public records within the agency for disposition, scheduling, and transfer action in accordance with procedures prescribed by the secretary of state and the state records committee;

(3) analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the secretary of state and the state records committee minimal retentions for all copies of public records within the agency;

(4) approve all records disposal requests ~~which that~~ are submitted by the agency to the state records committee; ~~and~~

(5) review established records retention schedules to ~~insure~~ *ensure* that they are complete and current; *and*

(6) *officially designate an agency records custodian to manage the functions provided for in this section.*"

Section 5. Section 2-6-401, MCA, is amended to read:

"2-6-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Local government" means:

(a) any city, town, county, consolidated city-county, or school district; and

(b) any subdivision of an entity named in subsection (1)(a).

(2) (a) "Public records" includes:

(i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies of the record *required by law to be kept as part of the official record*, regardless of physical form or characteristics, that:

(A) has been made or received by any local government ~~in connection with the~~ *to document the* transaction of official business;

(B) *is a public writing of the local government pursuant to 2-6-101(2)(a); and preserved for informational value or as evidence of a transaction*

(C) *is designated for retention by the local government records committee established in 2-6-402; and*

(ii) all other records or documents required by law to be filed with or kept by any local government in the state of Montana.

(b) The term includes electronic mail sent or received in connection with the transaction of official duties.

(c) *The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication.*

(3) "Records custodian" means any individual responsible for the proper filing, storage, or safekeeping of any public records."

Approved February 13, 2003

CHAPTER NO. 31

[HB 38]

AN ACT REMOVING MISDEMEANOR CRIMINAL PENALTIES AND INCREASING CIVIL PENALTIES FOR LOBBYISTS AND LOBBYIST PRINCIPALS IN NONCOMPLIANCE WITH TIMELY FILING OF REPORTS; PROVIDING FOR A HEARING WHEN A CIVIL PENALTY IS IMPOSED FOR LATE FILING OF REPORTS; EXPANDING THE DUTIES OF THE COMMISSIONER OF POLITICAL PRACTICES REGARDING VIOLATIONS OF LOBBYING LAWS; EXTENDING THE PERIOD TO BRING AN ACTION; AMENDING SECTIONS 5-7-108, 5-7-209, AND 5-7-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-7-108, MCA, is amended to read:

“5-7-108. Inspection of applications and reports—issuance of orders of noncompliance — order of noncompliance — notification. (1) Each application and report filed with the commissioner must be inspected within 10 days after it is filed. If a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance.

(2) An order of noncompliance may be issued when:

(a) it is determined that an application or report filed with the commissioner does not conform to the requirements of this chapter; or

(b) a person has failed to file an application or report required by law.

~~(2)(3)~~ (3) The person *notified of noncompliance* shall submit the necessary information within 5 days after receiving the notice of noncompliance. ~~Upon failure— If the person notified of noncompliance fails to submit the required information within 5 days, the commissioner may initiate a civil or criminal action pursuant to the procedures contained in 5-7-305.”~~

Section 2. Civil penalties for delays in filing — option for hearing — suspension of penalty. (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

(2) The penalty imposed in subsection (1) is not subject to the procedural requirements of 5-7-305 and must be applied if a person fails to meet the requirements of 5-7-108(3).

(3) A person against whom a civil penalty is imposed pursuant to subsection (1) may request, within 10 days of receiving a notice of imposition of a civil penalty, a hearing before the commissioner. Upon receipt of a timely request, the commissioner shall hold an informal contested case hearing as provided in Title 2, chapter 4, part 6. Upon the filing of a timely request for a hearing, the imposition of the daily civil penalty provided for in this section must be suspended until the commissioner issues a decision. At the hearing, the commissioner shall consider any factors or circumstances in mitigation and may reduce or waive the civil penalty.

(4) All civil penalties imposed pursuant to this section must be deposited in the state general fund.

Section 3. Section 5-7-209, MCA, is amended to read:

“5-7-209. Payments prohibited unless reported — penalty for late filing, failure to report, or for false statement. A principal may not make payments to influence official action by any public official unless that principal files the reports required under this chapter. A principal who fails to file a required report *within the time required by this chapter* is subject to the ~~penalty penalties~~ provided in ~~[section 2(1)]~~ and 5-7-305 ~~as well as any civil action provided for in that section~~. A principal who knowingly files a false, erroneous, or incomplete statement commits the offense of unsworn falsification to authorities.”

Section 4. Section 5-7-305, MCA, is amended to read:

“5-7-305. Penalties and enforcement. ~~(1) Any person violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon~~

~~conviction thereof shall be punished by imprisonment in the county jail not more than 6 months or by a fine not exceeding \$200, or both.~~

~~(2)(1) Any~~ A person who violates any of the provisions of this chapter ~~shall be~~ is subject to civil penalties of not less than \$250 and not more than \$7,500 according to the discretion of the district court, as court of original jurisdiction. A lobbyist who violates any of the provisions of this chapter ~~shall must have~~ *his the lobbyist's* license suspended or revoked according to the discretion of the court. Any public official holding elective office adjudged in violation of the provisions of this ~~act~~ *chapter* is additionally subject to recall under ~~the~~ *the* Montana Recall Act, ~~2-16-601, et seq. Title 2, chapter 16, part 6 and such the violation shall constitute~~ *constitutes* an additional basis for recall to those mentioned in 2-16-603(3).

~~(3)(2)~~ The attorney general, ~~the~~ *the* commissioner, or the county attorney of the county in which the violation takes place may bring ~~criminal or a civil actions~~ *action* in the name of the state for any appropriate ~~criminal or civil~~ *remedy*.

~~(4)(3)~~ If a ~~prosecution~~ *civil penalty action* is undertaken by ~~the attorney general or the commissioner or any county attorney,~~ *the attorney general* all costs associated with the prosecution ~~shall must~~ be paid by the state of Montana.

~~(5)(4)~~ (a) Any individual who has notified ~~the commissioner,~~ the attorney general, ~~the commissioner,~~ and the appropriate county attorney in writing that there is reason to believe that some portion of this chapter is being violated may ~~himself~~ bring in the name of the state an action (~~hereinafter~~ referred to as a citizen's action) authorized under this chapter if:

(i) the attorney general, ~~the commissioner, or~~ *and* the appropriate county attorney ~~have has~~ failed to commence an action ~~hereunder~~ within ~~40~~ *90* days after ~~such~~ notice; and

(ii) ~~said attorneys then fail~~ *the attorney general, the commissioner, or the county attorney fails* to commence an action within 10 days after ~~receiving a written notice delivered to them advising them~~ that a citizen's action will be brought if ~~they do~~ *the attorney general, the commissioner, or the county attorney does not* bring an action.

(b) Each notification ~~shall toll~~ *tolls* the ~~applicable~~ *applicable* statute of limitations until the expiration of the waiting period.

(c) If the individual who brings the citizen's action prevails, ~~he shall be the individual is~~ entitled to be reimbursed by the state of Montana for costs and ~~attorney's attorney~~ fees incurred; ~~provided that~~ *However,* in the case of a citizen's action ~~which that~~ is dismissed and ~~which that~~ the court also finds was brought without reasonable cause, the court may order the individual commencing the action to pay all costs of trial and reasonable ~~attorney's attorney's~~ fees incurred by the defendant.

~~(6)(5)~~ ~~No~~ A civil action may ~~not~~ be brought under this section more than 3 years after the occurrence of the facts ~~which that~~ give rise to the action.

~~(7)(6)~~ All civil penalties imposed pursuant to this section ~~shall must~~ be deposited in the state general fund.

~~(8)(7)~~ A hearing under this chapter ~~shall must~~ be held by the court unless the defendant-licensee demands a jury trial. The trial ~~shall must~~ be held as soon as possible but at least 20 days after the filing of the charges and ~~shall must~~ take precedence over all other matters pending before the court.

~~(9)~~(8) If the court finds for the plaintiff, judgment ~~shall~~ *must* be rendered revoking or suspending the license and the clerk of court shall file a certified copy of the judgment with the commissioner.”

Section 5. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 5, chapter 7, and the provisions of Title 5, chapter 7, apply to [section 2].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved February 18, 2003

CHAPTER NO. 32

[HB 136]

AN ACT ELIMINATING THE ALLOCATION AND STATUTORY APPROPRIATION OF INTEREST INCOME FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE OFFICE OF ECONOMIC DEVELOPMENT FOR BUSINESS RECRUITMENT AND RETENTION; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

“15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) For the fiscal year ending June 30, 2003, the amount of 10% and for fiscal years beginning on or after July 1, 2003, the amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) For the fiscal year ending June 30, 2003, the amount of 6.01% and for fiscal years beginning on or after July 1, 2003, the amount of 7.75% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) For fiscal years beginning on or after July 1, 2003, the amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) For fiscal years beginning on or after July 1, 2003, the amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

~~(ii) for the fiscal year beginning July 1, 2001, \$1.25 million, for the fiscal year beginning July 1, 2002, \$925,000, and for fiscal years beginning on or after July 1, 2003, \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;~~

(iii) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

~~(C) except for the fiscal year beginning July 1, 2002, \$425,000 for certified communities;~~

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) \$300,000 for export trade enhancement;

~~(iv) \$175,000 to the office of economic development for business recruitment and retention; and~~

~~(v) (iv) \$600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.~~

~~(c) For the fiscal year beginning July 1, 2001, there is transferred from the interest income referred to in subsection (7)(b) \$4.85 million to the research and commercialization state special revenue account created in 90-3-1002. For the fiscal year beginning July 1, 2002, there is transferred from the interest income referred to in subsection (7)(b) \$3.165 million to the research and commercialization state special revenue account created in 90-3-1002. Beginning July 1, 2003, there is transferred annually from the interest income referred to in subsection (7)(b) \$3.65 million to the research and commercialization state special revenue account created in 90-3-1002.~~

(Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000; sec. 8(1), Ch. 12, Sp. L. August 2002.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 7.75% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.”

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved February 18, 2003

CHAPTER NO. 33

[HB 175]

AN ACT CLARIFYING THE EXECUTIVE BRANCH OVERSIGHT DUTIES OF THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTION 75-1-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-324, MCA, is amended to read:

“75-1-324. Duties of environmental quality council. The environmental quality council shall:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields in which legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations; and

(10) perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the *following executive branch agencies and the entities attached to the agencies for administrative purposes*:

- (a) department of environmental quality;
- (b) department of fish, wildlife, and parks; and
- (c) department of natural resources and conservation."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 18, 2003

CHAPTER NO. 34

[HB 207]

AN ACT CHANGING THE GENERAL ASSESSMENT DAY FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE FOR SUPPLEMENTAL ASSESSMENTS FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE DEPARTMENT OF REVENUE SHALL CERTIFY TOTAL TAXABLE VALUE TO EACH TAXING AUTHORITY FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE AN ESTIMATE OF TOTAL TAXABLE VALUE WITHIN THE JURISDICTION OF A TAXING AUTHORITY BY THE SECOND MONDAY IN JULY UPON RECEIPT OF A REQUEST FROM THE TAXING AUTHORITY; CHANGING THE DATE BY WHICH THE DEPARTMENT OF REVENUE SHALL DELIVER A CERTIFIED COPY OF THE PROPERTY TAX RECORD TO ALL CITIES OF THE THIRD CLASS AND TOWNS WITHIN EACH COUNTY THAT MAKE WRITTEN REQUEST FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE DEPARTMENT OF REVENUE SHALL DELIVER TO THE COUNTY SUPERINTENDENT AND TO EACH CITY OR TOWN CLERK A STATEMENT SHOWING THE SEPARATE TOTAL ASSESSED VALUE AND THE TOTAL TAXABLE VALUE OF ALL PROPERTY IN THE DISTRICT, CITY, OR TOWN FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE BOARD OF COMMISSIONERS OF EACH IRRIGATION DISTRICT ORGANIZED UNDER TITLE 85, CHAPTER 7, PARTS 1 AND 15, MCA, SHALL ASCERTAIN AND LEVY THE AMOUNT TO BE RAISED THAT YEAR FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE DIRECTORS OF A CONSERVATION DISTRICT SHALL PROVIDE THE DEPARTMENT OF REVENUE AND COUNTY TREASURER OR TREASURERS A STATEMENT OF THE SPECIAL ASSESSMENTS TO BE COLLECTED FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; AMENDING SECTIONS 7-6-4410, 15-8-201, 15-8-204, 15-10-202, 20-9-122, 85-7-2104, AND 85-9-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4410, MCA, is amended to read:

“7-6-4410. Property tax record to be furnished to certain municipalities. On or before the ~~second~~ *first* Monday in ~~July~~ *August* of each year, the department of revenue shall furnish a certified copy of the property tax record to all cities of the third class and towns within each county that make written request for the record on or before the first Monday in April of each year. The property tax record must pertain to property within the limits of the requesting cities and towns.”

Section 2. Section 15-8-201, MCA, is amended to read:

“15-8-201. General assessment day. (1) The department shall, between January 1 and the ~~second~~ *first* Monday of ~~July~~ *August* in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county.

(2) The department shall assess property to:

(a) the person by whom it was owned or claimed or in whose possession or control it was at midnight of the preceding January 1; or

(b) except in the case of land splits, the new owner if the provisions of 15-7-304 have been met and the transfer certificate has been received and processed prior to determining the taxes that are due as provided in 15-10-305(2).

(3) The department shall also ascertain and assess all mobile homes arriving in the county after midnight of the preceding January 1.

(4) A mistake in the name of the owner or supposed owner of real property does not invalidate the assessment.

(5) The procedure provided by this section does not apply to:

(a) motor vehicles;

(b) motor homes, travel trailers, and campers;

(c) watercraft;

(d) livestock;

(e) property defined in 61-1-104 as special mobile equipment that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;

(f) mobile homes and manufactured homes held by a distributor or dealer as stock in trade; and

(g) property subject to the provisions of 15-16-203.”

Section 3. Section 15-8-204, MCA, is amended to read:

“15-8-204. Supplemental assessment. When any personal property liable to taxation is brought into a county at any time after the ~~second~~ *first* Monday of ~~July~~ *August* and ~~such~~ *the* property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected, as provided in this code, at any time.”

Section 4. Section 15-10-202, MCA, is amended to read:

“15-10-202. Certification of taxable values. (1) Subject to subsection (2), by the ~~second~~ *first* Monday in ~~July~~ *August*, the department shall certify to each taxing authority the total taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total taxable value of newly taxable property, as described in 15-10-420(3). *Upon the request of a taxing authority, the department shall provide an estimate of the total taxable value within the jurisdiction of the taxing authority by the second Monday in July.*

(2) For tax years beginning after December 31, 2000, if the ownership of centrally assessed property has been transferred in whole or in part to a different owner and the transferred property has a market value of \$1 million or more as determined by the department, the department shall determine separately the taxable value of newly taxable property and the taxable value associated with reappraisal of centrally assessed property that is transferred to a different owner. The department shall certify to each taxing authority, at the time specified in subsection (1), the taxable value of newly taxable property and

the total taxable value of centrally assessed property, exclusive of newly taxable property, that has been transferred to a different owner.”

Section 5. Section 20-9-122, MCA, is amended to read:

“20-9-122. Statement of district, city, and town valuations. (1) By the ~~second~~ *first* Monday of ~~July~~ *August*, the department of revenue shall deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in the county the total assessed value and the total taxable value of all property in the districts, cities, or towns, as these valuations appear in the property tax record.

(2) In the case of a joint school district, the department of revenue shall, at the time of delivering the statement to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in the appropriate county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated.”

Section 6. Section 85-7-2104, MCA, is amended to read:

“85-7-2104. Annual tax levy — apportionment when tracts divided.

(1) (a) On or before the ~~second~~ *first* Monday in ~~July~~ *August* each year, the board of commissioners of each irrigation district organized under parts 1 and 15 shall ascertain:

(i) the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs; and

(ii) the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(b) Subject to 15-10-420, the board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the district, that portion of the respective total amounts to be raised ~~which~~ *that* the total irrigable area of any tract or lot bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district is assessed and required to pay the same amount as every other acre of irrigable land in the district, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(c) Indebtedness under subsection (1) includes debt incurred under any contract between the district and the United States but excludes any indebtedness incurred by the district on behalf of a subdistrict.

(2) (a) On or before the ~~second~~ *first* Monday in ~~July~~ *August* each year, the board of commissioners of each irrigation district organized under parts 1 and 15 for which a subdistrict has been created pursuant to 85-7-404 shall determine the total amount to be raised that year for interest and principal payments on the outstanding bonded or other indebtedness of the district incurred on behalf of the subdistrict.

(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts

or in less than the platted lot, against each tract) in the subdistrict, the portion of the total amount to be raised apportioned according to the ratio of the total irrigable area of the tract or lot to the total irrigable area of the lands in the subdistrict, so that each acre of irrigable land in the subdistrict is assessed and required to pay the same amount as every other acre of irrigable land in the subdistrict, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(3) In the event that the ownership of any 40-acre tract or other subdivision of land in the district or subdistrict is divided after a special tax or assessment against the land has been levied, each of the owners of a tract or subdivision is entitled to have the special tax or assessment equitably apportioned to and against the divisions of the tract or subdivision, so that each owner is enabled to pay a special tax or assessment against the owner's portion of the tract or subdivision and have the land discharged from the lien. The charge against any separately owned tract of land may not be less than \$5."

Section 7. Section 85-9-603, MCA, is amended to read:

"85-9-603. Directors to provide financial information. (1) Before the ~~second~~ *first* Monday in ~~July~~ *August* of each year, the directors shall provide the department of revenue and the county treasurer with:

- (a) the budget for the current fiscal year;
- (b) a statement of the amount of special assessments to be collected for the districts; and
- (c) a listing of all real property within the district.

(2) If the district is located in more than one county, the directors shall provide this information to the department of revenue and each of the affected county treasurers."

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Retroactive applicability. (1) [Section 2] applies retroactively, within the meaning of 1-2-109, to the general assessment day for calendar year 2003.

(2) [Section 6] applies retroactively, within the meaning of 1-2-109, to the annual levy of the board of commissioners of an irrigation district for calendar year 2003.

(3) [Section 7] applies retroactively, within the meaning of 1-2-109, to the annual assessment provided in 85-9-601 for calendar year 2003 of a conservation district for which the directors shall provide the information specified in 85-9-603.

(4) [This act] applies retroactively, within the meaning of 1-2-109, to any assessment or levy by any taxing jurisdiction for calendar year 2003 for which an assessment or levy date is not specified.

Approved February 18, 2003

CHAPTER NO. 35

[HB 232]

AN ACT REVISING LAWS GOVERNING COUNTY, MUNICIPAL, AND SPECIAL DISTRICT CAPITAL IMPROVEMENT FUNDS; INCREASING TO

\$500,000 THE LIMITATION ON COUNTY ROAD AND BRIDGE IMPROVEMENT FUNDS; AMENDING SECTIONS 7-6-616, 7-7-2101, 7-14-2506, 7-21-3406, 7-21-3413, AND 7-33-2111, MCA; REPEALING SECTION 7-21-3414, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-616, MCA, is amended to read:

“7-6-616. Capital improvement ~~program~~ funds. (1) A county, ~~or~~ municipal, ~~or special district~~ governing body ~~may provide for~~ may establish a capital improvement ~~program~~ fund for the replacement, improvement, and acquisition of property, facilities, or equipment that costs in excess of \$5,000 and that has a life expectancy of 5 years or more.

(2) ~~The~~ A capital improvement ~~program~~ fund must be formally adopted by the county, ~~or~~ municipal, ~~or special district~~ governing body.

(3) The capital improvement ~~program~~ fund may receive funds money from ~~up to 10% of one or more property tax levies and may receive funds from~~ any source, including funds that have been allocated in any year but have not been expended or encumbered by the end of the fiscal year.

(4) Money in the capital improvement fund must be invested as provided by law, and interest and income from the investment of the capital improvement fund must be credited to the fund.”

Section 2. Section 7-7-2101, MCA, is amended to read:

“7-7-2101. Limitation on amount of county indebtedness. (1) A county may not issue bonds or incur other indebtedness for any purpose in an amount, including existing indebtedness, that in the aggregate exceeds 1.4% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes.

(2) Except as provided in 7-7-2402, and 7-21-3413, ~~and 7-21-3414~~, a county may not incur indebtedness or liability for any single purpose to an amount exceeding \$500,000 without the approval of a majority of the electors of the county voting at an election as provided by law.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6.”

Section 3. Section 7-14-2506, MCA, is amended to read:

“7-14-2506. County road and bridge ~~depreciation reserve~~ capital improvement fund — limitation. (1) The governing body of a county may establish a road and bridge ~~depreciation reserve~~ capital improvement fund ~~to be used for acquisition and replacement of property, capital improvements, and equipment necessary to maintain and improve county road and bridge facilities and services in accordance with the provisions of Title 7, chapter 6, part 6.~~

(2) ~~Budgeted county road and bridge money that has not been expended or encumbered for a fiscal year may be deposited in the road and bridge depreciation reserve fund.~~ The fund may not exceed ~~\$200,000~~ \$500,000.

(3) ~~Money in the road and bridge depreciation reserve fund must be invested as provided by law. Interest and income from the investment of the road and bridge depreciation reserve fund must be credited to the fund.”~~

Section 4. Section 7-21-3406, MCA, is amended to read:

“7-21-3406. Powers of county fair commission. In addition to the powers and duties established in the resolution of the board of county commissioners creating the county fair commission and by the provisions of 7-21-3407 through ~~7-21-3414~~ 7-21-3413, the county fair commissioners have control and operation of the fair and the supervision and management of the fairgrounds and also the leasing of buildings and fairgrounds on a continuous basis throughout the fiscal year. ~~and The fair commission shall return to the fair fund of the county all revenue obtained from the leasing or renting of the buildings and fairgrounds.~~”

Section 5. Section 7-21-3413, MCA, is amended to read:

“7-21-3413. Capital Fair commission capital improvement fund authorized. The fair commission of any county in Montana is authorized to ~~may establish, by a vote of the majority of the commission,~~ a capital improvement fund for the replacement and acquisition of property, buildings, or equipment costing more than \$5,000 and having a useful life of 5 years or more in accordance with the provisions of Title 7, chapter 6, part 6.”

Section 6. Section 7-33-2111, MCA, is amended to read:

“7-33-2111. Fire district capital improvement fund authorized. The trustees of a fire district may establish a capital improvement fund. ~~The fund may be used for the acquisition and replacement of equipment or facilities, including real property. The cost of the equipment must exceed \$5,000, and the equipment must have a life expectancy of 5 years or more in accordance with the provisions of Title 7, chapter 6, part 6.”~~

Section 7. Repealer. Section 7-21-3414, MCA, is repealed.

Section 8. Effective date. [This act] is effective July 1, 2003.

Approved February 18, 2003

CHAPTER NO. 36

[HB 96]

AN ACT REPEALING THE ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE TAX CREDIT; REPEALING SECTIONS 15-53-201, 15-53-202, AND 15-53-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 15-53-201, 15-53-202, and 15-53-203, MCA, are repealed.

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 19, 2003

CHAPTER NO. 37

[HB 115]

AN ACT INCREASING THE MEMBERSHIP OF THE STATE EMERGENCY RESPONSE COMMISSION FROM 19 MEMBERS TO 27 MEMBERS AND CHANGING THE MAKEUP OF THE COMMISSION'S MEMBERSHIP; PROVIDING THAT THE COMMISSION ACTS AS AN ALL-HAZARD ADVISORY BOARD TO THE DIVISION OF DISASTER AND EMERGENCY SERVICES; AND AMENDING SECTION 10-3-1204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-1204, MCA, is amended to read:

"10-3-1204. State emergency response commission. (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of ~~19~~ 27 members appointed by the governor. The commission must include representatives of the national guard, ~~the air force, state and local fire organizations, state and local emergency medical responders, state and local law enforcement agencies, local emergency planning committees, a Montana utility company, and a railroad company doing business in the state,~~ representatives from the department of environmental quality, the division, the department of transportation, the department of justice, ~~the department of fish, wildlife, and parks,~~ the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire training school, the emergency medical services and injury prevention section of the health policy and services division in the department of public health and human services, the department of fish, wildlife, and parks, a representative of Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, the university system, a local emergency planning committee, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns, ~~and~~ and the office of the governor, ~~and any other representatives that the governor appoints.~~ Members of the commission serve a term of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who shall act as copresiding officers.

(2) The commission shall implement the provisions of this part, and in so doing, the commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan, which coordinates state and local emergency authorities, to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) The commission shall act as an all-hazard advisory board to the division by:

(a) assisting the division in carrying out its responsibilities by providing the division with recommendations on issues pertaining to all-hazard emergency management; and

(b) authorizing the establishment of subcommittees to develop and provide the recommendations called for in subsection (13)(a).

~~(13)~~(14) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part."

Approved February 20, 2003

CHAPTER NO. 38

[HB 143]

AN ACT LIMITING THE LIABILITY OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD WITH RESPECT TO ACTS OR OMISSIONS OF AND INCORRECT REPORTING BY EMPLOYERS OR OTHER REPORTING AGENCIES; AMENDING SECTION 19-2-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-511, MCA, is amended to read:

“19-2-511. Limitation of liability. (1) The board shall exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims.

(2) Plan fiduciaries are not liable for any loss to a *participant’s or beneficiary’s account under a defined contribution plan or an optional retirement program established pursuant to 19-21-101 participant’s or beneficiary’s account* that results from the participant’s or beneficiary’s exercise of control.

(3) Plan fiduciaries are not responsible for the acts or omissions of any *employer or reporting agency or of any vendor* providing services to the defined contribution plan or optional retirement program. Nothing in this subsection limits the liability of any vendor for services required by contract.

(4) Plan fiduciaries are not liable for their reliance on the express provisions of the defined contribution plan or optional retirement program.

(5) *Plan fiduciaries are not liable for investment losses incurred in the defined contribution plan or optional retirement program as a result of incorrect reporting by an employer or other reporting agency.”*

Section 2. Two-thirds vote required. Because amendments in [section 1] expand a limit on governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 19, 2003

CHAPTER NO. 39

[HB 233]

AN ACT CLARIFYING THE TAX CREDIT FOR THE INSTALLATION OF A GEOTHERMAL SYSTEM BY REMOVING AN ERRONEOUS INTERNAL REFERENCE; AMENDING SECTION 15-32-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-115, MCA, is amended to read:

“15-32-115. Credit for geothermal system — to whom available — eligible costs — limitations. (1) A resident individual taxpayer who completes installation of a geothermal system, as defined in 15-32-102, in the taxpayer’s principal dwelling is entitled to claim a tax credit, ~~as provided in subsection (3),~~ against the taxpayer’s tax liability under chapter 30 for a portion of the installation costs of the system, not to exceed \$1,500. The amount of the credit not used in the year in which the installation is made may be carried forward against taxes imposed under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

- (2) For the purposes of this section, installation costs include the cost of:
- (a) trenching, well drilling, casing, and downhole heat exchangers;
 - (b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;
 - (c) ground source or ground coupled heat pumps;
 - (d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump heat from a well into a building; and
 - (e) design and labor."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 20, 2003

CHAPTER NO. 40

[HB 47]

AN ACT PROVIDING AN ADDITIONAL METHOD FOR CREATION OF A HERD DISTRICT; AND AMENDING SECTION 81-4-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-4-301, MCA, is amended to read:

"81-4-301. Herd districts — creation, size, and location. (1) Herd districts may be created in any county in the state of Montana:

(a) upon petition of owners or possessors of 55% of the land in the district and providing that 25% or more of the land in the district is in actual cultivation or being used for residential purposes; *or*

(b) upon petition of owners or possessors of 75% of the land in the district.

(2) Herd districts must contain 12 square miles or more, lying not less than 1 mile in width, outside of the incorporated cities, except that herd districts may be created containing not less than 6 or more than 54 square miles, lying not less than 2 miles in width, when the territory joins and is contiguous with the boundaries of a city having a population of 10,000 or more and the territory to be created in a herd district has a suburban population of not less than 200 people.

~~(2)~~(3) In formation of a herd district the entire holding of any owner or lessee must be included unless the owner or lessee consents that less than the owner or lessee's entire contiguous holdings be included in the petition.

~~(3)~~(4) The petition must designate the months of the year when the herd district is effective, and upon presentation and filing of the petition, properly signed, giving the outside boundaries and description of the proposed district and the post-office address of the petition signers, with the clerk and recorder in the county in which the district is being created, the county commissioners of that county, upon receipt of the petition, shall set a date for hearing protests and verifying the petition signatures and shall give not less than 20 days' notice of the hearing by three publications in a newspaper of general circulation in the county of the proposed district. At the hearing held pursuant to the notices, the county commissioners shall examine the petition and shall cause a map to be made in order to determine the shape and regularity of the boundaries of the proposed district. The commissioners may then establish the district, but the district shall be established only in a manner that the district will be reasonably

regular and symmetrical in shape or practicable in relation to the geographical features of the district. It is not required that the boundaries of a district follow section lines to meet the requirement of reasonably regular and symmetrical boundaries.

~~(4)~~(5) Should it appear to the county commissioners after the hearing that the signatures attached to the petition were genuine, they shall immediately declare the herd district created and established. After making the declaration, the county commissioners shall give notice by four weekly publications in a newspaper nearest the district of the creation of the district, also stating the period that the district will be in effect. A district may not be in effect until 30 days have expired after the order.

~~(5)~~(6) If the signature of lessee appears on the petition creating or abolishing any herd district, the owner or owners of the land may appear either in person or by agent and enter their protest and the board of county commissioners shall remove the name of the lessee from the petition, and a person may not withdraw the person's name after the hour set for hearing the protest."

Approved February 26, 2003

CHAPTER NO. 41

[HB 88]

AN ACT GENERALLY REVISING THE LAWS GOVERNING DEDICATED REVENUE PROVISIONS; REVISING THE PROCEDURE FOR REVIEWING DEDICATED REVENUE PROVISIONS FOR LOCAL GOVERNMENTS; PROVIDING FOR THE DEPOSIT OF 50 PERCENT OF FEDERAL TAYLOR GRAZING FUNDS IN THE STATE GENERAL FUND TO BE USED FOR THE ELEMENTARY EDUCATION BASE FUNDING PROGRAMS OF A COUNTY; ELIMINATING THE SEPARATE STATUTORY PROCESS FOR REVIEWING DEDICATED REVENUE PROVISIONS FOR LOCAL GOVERNMENTS; AMENDING SECTIONS 17-1-501, 17-1-502, 17-1-505, 17-3-222, AND 20-9-331, MCA; REPEALING SECTIONS 17-1-601, 17-1-602, AND 17-1-603, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-501, MCA, is amended to read:

"17-1-501. Legislative intent. (1) It is the intent of the legislature, by establishing criteria for the review and evaluation of revenue dedication provisions, to ensure that provisions for revenue dedication:

- (a) are based on sound principles of revenue dedication as described in 17-1-507;
- (b) reflect present circumstances and legislative priorities for state spending;
- (c) are terminated when they are no longer necessary or appropriate; and
- (d) are subject to the same legislative scrutiny as programs or activities funded from the general fund.

(2) It is the intent of the legislature, by establishing criteria for the review and evaluation of statutory appropriation provisions, to ensure that provisions with statutory appropriations:

(a) reflect present circumstances and legislative priorities for state spending;

(b) are terminated when they are no longer necessary or appropriate; and

(c) are subject to the same legislative scrutiny as other appropriations.

(3) *When revenue is dedicated to a local government, it is the intent of the legislature that the dedicated revenue provision be reviewed in the context of the policy and purpose expressed in 15-1-120.*

Section 2. Section 17-1-502, MCA, is amended to read:

“17-1-502. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Administrative costs” includes:

(a) personal services;

(b) operating expenses, such as travel, supplies, and communication costs; and

(c) capital expenses, such as equipment, building costs, and real property costs.

(2) (a) “Continuing and reliable source of revenue” means a revenue source for which an agency forecasts an annual level of collections based upon historical data and prepares a budget for expenditures commensurate with the level of collections. Collections may not change significantly on an annual basis.

(b) The term does not include revenue:

(i) that an agency will receive only as a result of an occurrence that is not a routine part of agency operations;

(ii) that will vary significantly on an annual basis; or

(iii) that is unable to be included in the agency budget because of the erratic nature of receipt.

(3) “Dedicated revenue provision” means an administrative or legislative action that allocates the revenue from a tax, fee, assessment, or other source to an account in the state special revenue fund, as described in 17-2-102, *or to a local government.*

(4) “General revenue source” means a source of revenue not governed by established or implied restrictions based on the source or limited use of the revenue. The term includes taxes, interest earnings, investment earnings, fines, and forfeitures.

(5) *“Local government” means a municipality, a county, a consolidated government, or a special district.*

~~(5)~~(6) “State special revenue fund” means a fund in the state treasury consisting of money from state sources that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government, as provided in 17-2-102.”

Section 3. Section 17-1-505, MCA, is amended to read:

“17-1-505. Review of dedicated revenue provisions. (1) The legislature recognizes that dedicated revenue provisions are subject to review by:

(a) the office of budget and program planning in the development and implementation of the executive budget and analysis of legislation;

- (b) the legislative fiscal division in analyzing the executive budget;
- (c) the legislative services division in drafting legislation;
- (d) the legislative auditor in auditing agencies; ~~and~~
- (e) the department of administration in performing the functions provided for in 17-2-106 and 17-2-111; *and*
- (f) *the department of revenue in reviewing revenue sources and determining distributions to local governments.*

(2) To avoid unnecessary *and unjustified* use of dedicated revenue provisions, the entities listed in subsection (1) shall, in the course of current duties, consider the principles in 17-1-507 and the criteria listed in this subsection for each new or existing dedicated revenue provision. *If an entity referred to in subsection (1) determines that the use of a dedicated revenue provision is not justified, the use or proposed use must be reported to the legislative fiscal analyst. The legislative fiscal analyst shall maintain a list of unjustified dedicated revenue provisions and shall report on the unjustified dedicated revenue provisions to the legislative finance committee no later than October 31 of the year preceding a regular legislative session.* A dedicated revenue provision should not give a program or activity an unfair advantage for funding. The expenditures from a dedicated revenue provision must be based on requirements for meeting a legislatively established outcome. Statutorily mandated programs or activities funded through dedicated revenue provisions from general revenue sources must be reviewed to the same extent as programs or activities funded from the general fund. The use of a dedicated revenue provision may be justified if it satisfies one or more of the following:

- (a) The program or activity funded provides direct benefits for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.
- (b) The use of the dedicated revenue provision provides special information or other advantages that could not be obtained if the revenue were allocated to the general fund.
- (c) The dedicated revenue provision provides program funding at a level equivalent to the expenditures established by the legislature.
- (d) The dedicated revenue provision involves collection and allocation formulas that are appropriate to the present circumstances and current priorities in state government.
- (e) The dedicated revenue provision does not impair the legislature's ability to scrutinize budgets, control expenditures, and establish priorities for state spending.
- (f) The dedicated revenue provision results in an appropriate projected ending fund balance.
- (g) The dedicated revenue provision fulfills a continuing, legislatively recognized need.
- (h) The dedicated revenue provision does not result in accounting or auditing inefficiency.

(3) *A local government dedicated revenue provision may be justified if it satisfies any of the following:*

(a) *The program or activity funded provides direct benefits or services for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.*

(b) *The provision provides necessary information or other advantages that could not be obtained if the revenue were allocated to the state general fund.*

(c) *The provision involves collection and allocation formulas that are appropriate to the present circumstances and current priorities of state and local government.*

(d) *The provision does not impair the ability of the legislature to scrutinize budgets, control expenditures, and establish state spending priorities.*

(e) *The provision fulfills a legislatively recognized continuing need.*

(f) *The provision does not result in accounting or auditing inefficiency or unnecessary complexity and instability of local government funding structures."*

Section 4. Section 17-3-222, MCA, is amended to read:

"17-3-222. Apportionment of money to counties. (1) It is the duty of the state treasurer to properly apportion and allocate the money received under 17-3-221 to the county treasurers, who shall allocate the money as follows:

(a) 50% to the county general fund; and

(b) 50% to *the state general fund to be used for the elementary BASE funding programs of the school districts in the county.*

(2) The payments from the state to the county treasurers provided for in subsection (1) are statutorily appropriated as provided in 17-7-502."

Section 5. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program.

(1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as

prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds ~~distributed to a county and~~ designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703; and

(g) oil and natural gas production taxes."

Section 6. Repealer. Sections 17-1-601, 17-1-602, and 17-1-603, MCA, are repealed.

Section 7. Effective date. [This act] is effective July 1, 2003.

Approved February 26, 2003

CHAPTER NO. 42

[HB 93]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO ADOPT RULES ALLOWING FOR THE EARLY REREGISTRATION OF A MOTOR VEHICLE; AND AMENDING SECTION 61-3-315, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-315, MCA, is amended to read:

"61-3-315. Reregistration on anniversary date — department to make rules — early reregistration. (1) A vehicle that has been registered for any of the periods designated in 61-3-314 must be reregistered for the same period on or before the anniversary date of the initial registration unless that period is changed as provided in subsections (2) and (4). The anniversary date for reregistration is the last day of the month for the designated registration period.

(2) (a) The owner of a motor vehicle subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in 61-3-560 and 61-3-561, may register the motor vehicle for a period not to exceed 24 months. The registration expires on the last day of the 24th month commencing from the date of the designated registration period under 61-3-314 for which the vehicle is registered.

(b) The owner of a motor vehicle 11 years old or older subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in 61-3-560 and 61-3-561, may permanently register the motor vehicle as provided in 61-3-562. The registration remains in effect until ownership of the vehicle is transferred to another person by the registered owner.

(3) The department shall adopt rules for the implementation and administration of 61-3-313 through 61-3-316 and for the identification of the registration on the vehicles. *The rules adopted by the department pursuant to this section must also allow early reregistration of motor vehicles that are subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee as provided in 61-3-560 and 61-3-561 when an owner of a motor vehicle presents extenuating circumstances.*

(4) The department shall provide for simultaneous registration of multiple vehicles that have common ownership. The rules must provide for a change of the registration period to coincide with the date an owner desires to register the vehicles.”

Approved February 26, 2003

CHAPTER NO. 43

[HB 168]

AN ACT CREATING A PERFORMANCE ASSURANCE STATE SPECIAL REVENUE ACCOUNT FOR PAYMENTS MADE BY TELECOMMUNICATIONS CARRIERS SUBJECT TO A PERFORMANCE ASSURANCE PLAN; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Performance assurance state special revenue account — statutory appropriation. (1) There is a performance assurance state special revenue account in the state special revenue fund. The account must be used for the deposit of payments to the state made by a telecommunications carrier pursuant to the terms of a performance assurance plan.

(2) Money in the performance assurance state special revenue account is statutorily appropriated, as provided in 17-7-502, and may be expended by the commission in carrying out its responsibilities to administer, audit, and oversee the performance assurance plan, pursuant to the terms of the plan.

(3) For purposes of this section, a “performance assurance plan” means a commission-approved, self-executing remedy plan to ensure that a telecommunications carrier provides adequate wholesale service to competitors after the carrier gains entry into the interlocal access and transport area long-distance market in its region pursuant to 47 U.S.C. 271.

Section 2. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; [section 1]; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved February 26, 2003

CHAPTER NO. 44

[HB 208]

AN ACT CLARIFYING THAT PARENTAL RIGHTS MAY BE TERMINATED WITHOUT REQUIRING A TREATMENT PLAN IF TWO MEDICAL DOCTORS OR CLINICAL PSYCHOLOGISTS SUBMIT TESTIMONY THAT THE PARENT CANNOT ASSUME THE ROLE OF PARENT WITHIN A

REASONABLE TIME; AMENDING SECTION 41-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in *In re C.R.O.*, 2002 MT 50, 309 Mont. 48, 43 P.3d 913 (2002), the concurring opinions urged the Legislature to revisit section 41-3-609(4)(b), MCA, concerning termination of parental rights without requiring a treatment plan.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-609, MCA, is amended to read:

“41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected the child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

- (a) the parent meets the criteria of subsections (1)(a) through (1)(e);
- (b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent *within a reasonable time*;
- (c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or
- (d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 26, 2003

CHAPTER NO. 45

[HB 209]

AN ACT CONFORMING THE EFFECT OF A LIEN RESULTING FROM FILING A TRANSCRIPT OF A JUDGMENT IN ANOTHER COUNTY TO THE LIEN RESULTING FROM THE DOCKETING OF A JUDGMENT; AMENDING SECTION 25-9-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-9-302, MCA, is amended to read:

"25-9-302. Filing of transcript of docket in another county — lien — expiration. (1) A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county. From the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor that is not exempt from execution in that county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien expires. Except as provided in ~~subsection (2)~~ *61-6-123*, the lien continues for ~~6~~ *10* years *from the date of the entry of the judgment* unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 26, 2003

CHAPTER NO. 46

[HB 112]

AN ACT ALLOWING VEHICLES TO PASS SCHOOL BUSES THAT ARE STOPPED TO RECEIVE OR DISCHARGE SCHOOL CHILDREN IN

DESIGNATED SCHOOL BUS TURNOUTS; SPECIFYING THE REQUIREMENTS NECESSARY TO DESIGNATE A SCHOOL BUS TURNOUT; AND AMENDING SECTIONS 61-8-301, 61-8-351, AND 61-8-715, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-301, MCA, is amended to read:

“61-8-301. Reckless driving. (1) A person commits the offense of reckless driving if the person:

(a) operates a vehicle in willful or wanton disregard for the safety of persons or property;

(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402; or

(c) operates a vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus that has stopped and is displaying the visual flashing red signal, as provided in 61-8-351 and 61-9-402. This subsection (1)(c) does not apply to situations described in 61-8-351~~(5)~~(6).

(2) Each municipality in this state may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

(3) A person who is convicted of the offense of reckless driving is subject to the penalties provided in 61-8-715.”

Section 2. Section 61-8-351, MCA, is amended to read:

“61-8-351. Meeting or passing school bus — penalty. (1) The driver of a vehicle upon a highway or street either inside or outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus that has stopped on the highway or street to receive or discharge any school children:

(a) shall stop the vehicle not less than 10 feet before reaching the school bus when there is in operation on the bus a visual flashing red signal as specified in 61-9-402; and

(b) may not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street and until the school bus ceases operation of its visual flashing red signal.

(2) The driver of a vehicle shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and must be prepared to stop when meeting or overtaking from either direction any school bus that is preparing to stop on the highway or street to receive or discharge school children as indicated by flashing amber lights as specified in 61-9-402.

(3) Each bus used for the transportation of school children must bear upon the front and rear plainly visible signs containing the words “SCHOOL BUS” in letters not less than 8 inches in height and, in addition, must be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights must be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights must be actuated by the driver of the school bus whenever but only whenever the vehicle is

stopped on the highway or street whether inside or outside the corporate limits of any city or town to receive or discharge school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a bus is stopped at the school site to receive or discharge school children and the receipt or discharge does not involve street crossing by the children. The lights may not be operated in violation of that policy.

(4) The requirements that a driver of a motor vehicle shall stop when a school bus receives or discharges school children under subsection (1) and the requirements that amber and red lights must be actuated by a school bus driver under subsection (3) do not apply when a school bus receives or discharges school children in a designated school bus pullout on a state highway. A designated school bus pullout must meet the following requirements:

(a) The pullout must be located on a roadway separated by a physical barrier, such as a guardrail, raised median, drainage ditch, or irrigation ditch.

(b) The separate roadway must be designed, constructed, and signed specifically for use by school buses, with sufficient space for safe ingress and egress from the main traveled way.

(c) The pullout must be approved by the local affected school district, by a resolution of the district trustees, and by the district superintendent as a mandatory school bus stop for receiving and discharging school children.

~~(4)~~(5) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for school functions, all markings on the bus indicating "SCHOOL BUS" must be covered or concealed.

~~(5)~~(6) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus that is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

~~(6)~~(7) Whenever a vehicle is established to have been in violation of subsection (1), the person in whose name the vehicle is registered is prima facie the driver of the vehicle at the time of the alleged violation.

~~(7)~~(8) Violation of subsection (1) is punishable upon conviction by a fine of not more than \$500."

Section 3. Section 61-8-715, MCA, is amended to read:

"61-8-715. Reckless driving — reckless endangerment of highway workers — penalty. (1) Except as provided in subsection (3), a person convicted of reckless driving under 61-8-301(1)(a) or (1)(c) or convicted of reckless endangerment of highway workers under 61-8-315 shall be punished upon a first conviction by imprisonment for a term of not more than 90 days, by a fine of not less than \$25 or more than \$300, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, by a fine of not less than \$50 or more than \$500, or both.

(2) Except as provided in subsection (3), a person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for a term of not less than 10 days or more than 6 months to which may be added, at the discretion of the court, a fine of not less than \$300 or more than

\$500. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added, at the discretion of the court, a fine of not less than \$500 or more than \$1,000.

(3) A person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding \$10,000, by incarceration for a term not to exceed 1 year, or both. Section 61-8-351(6)(7) does not apply to a prosecution under 61-8-301(1)(c) that is punishable under this subsection.”

Approved February 27, 2003

CHAPTER NO. 47

[HB 151]

AN ACT ALLOWING ELECTION JUDGES TO BE PAID MORE THAN MINIMUM WAGE; AND AMENDING SECTION 13-4-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-4-106, MCA, is amended to read:

“13-4-106. Compensation of judges. (1) Except as provided in subsection (2), election judges must be paid at *least* the prevailing federal minimum wage for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter if the remuneration received by the election judge is less than \$1,000 in the calendar year.

(2) The chief election judge may be paid at a rate higher than the other election judges and may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for the certification are received.”

Approved February 27, 2003

CHAPTER NO. 48

[HB 217]

AN ACT ELIMINATING THE TRANSFER OF FUNDS FROM THE GENERAL FUND TO THE DEPARTMENT OF TRANSPORTATION STATE SPECIAL REVENUE NONRESTRICTED ACCOUNT IN FISCAL YEARS 2004 AND 2005; INCREASING THE AMOUNT TRANSFERRED IN FISCAL YEAR 2006 TO ACCOUNT FOR THE PERCENTAGE INCREASES LOST AS A RESULT OF NOT RECEIVING FUNDS IN FISCAL YEARS 2004 AND 2005; AMENDING SECTION 15-1-122, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-122, MCA, is amended to read:

“15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) \$75,000 in fiscal year 2003;

(b) \$0 in fiscal years 2004 and 2005;

~~(b)(c)~~ ~~\$2,960,715~~ \$3,050,205 in fiscal year ~~2004~~ 2006; and

~~(c)(d)~~ in each succeeding fiscal year, the amount in subsection (2)~~(b)(c)~~, increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) \$1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 for each snowmobile registered under 23-2-616, with \$2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-644 and \$2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) \$5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h);

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, \$5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.

(5) For each fiscal year, beginning with fiscal year 2002, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000. Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

(6) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved February 27, 2003

CHAPTER NO. 49

[HB 238]

AN ACT EXEMPTING LOCAL GOVERNMENT ENTITIES FROM CERTAIN REQUIREMENTS FOR SHORT-TERM LEASE OF A WATER APPROPRIATION RIGHT FOR CERTAIN DUST ABATEMENT ACTIVITIES; EXEMPTING LOCAL GOVERNMENT ENTITIES FROM CERTAIN PUBLIC NOTICE REQUIREMENTS; REQUIRING THAT A LOCAL GOVERNMENT ENTITY POST A COPY OF THE LEASE AGREEMENT AT THE POINT OF DIVERSION WHEN WATER IS DIVERTED UNDER A SHORT-TERM LEASE AGREEMENT; AMENDING SECTION 85-2-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-410, MCA, is amended to read:

“85-2-410. Short-term lease of appropriation right. (1) An appropriator may lease for a term not to exceed 90 days all or part of an appropriation right for road construction or dust abatement without the prior approval of the department, subject to the requirements of this section. The lease agreement must include the following information:

- (a) the name and address of the lessee;
- (b) the name of the owner of the appropriation right;
- (c) the number of the appropriation right;
- (d) the purpose of use of water for which the lease is being made;
- (e) the source of water to be appropriated;
- (f) the starting and ending date of the proposed use of water;
- (g) the proposed point of diversion;
- (h) the proposed place of use;
- (i) the diversion flow rate and volume of water to be used during the period of use; and
- (j) a description of how the existing use of water will be reduced to accommodate the temporary change of use of the appropriation right, including the number and location of acres to be removed from irrigation, if applicable.

(2) A short-term lease of an appropriation right under this section may not exceed 60,000 gallons a day or the amount of the appropriation right, whichever is less. Any combination of short-term leases cannot exceed 120,000 gallons a day for one project.

(3) ~~The~~ *Except as provided in subsection (9),* the following information must be submitted to the department at least 2 days prior to the use of water by a lessee under this section:

- (a) a copy of the publication notice or copies of the individual notice required under subsection (4);
- (b) a copy of the lease agreement; and
- (c) for a combination of short-term leases greater than 60,000 gallons a day for one project, an analysis by the lessee of any potential adverse effects and a description of planned actions to mitigate any potential adverse effects to appropriators in the area of the proposed point of diversion.

(4) ~~The~~ *Except as provided in subsection (9),* the lessee of an appropriation right under this section shall, 30 days prior to the use of the water, publish a notice of the proposed use of water once in a newspaper of general circulation in the area of the diversion or mail individual notice to potentially affected appropriators in the area of the proposed point of diversion. The published notice or the individual notice must contain the information listed in subsections (1)(a) through (1)(j) and (3)(c).

(5) (a) The owner of a water right, whether the right is prior or subsequent in priority to the short-term lease acquired by a person under this section, who cannot satisfy in full the owner's right during the time that the short-term lessee is diverting water may make a complaint to the department and cause the short-term lessee's diversion to be discontinued.

(b) The diversion is discontinued until the owner's right is satisfied or until the lessee establishes to the department that the discontinuance has had no effect on the owner's water right. Upon establishment that discontinuance has

not had an effect, the department shall enter an order allowing the diversion to continue.

(6) If a person purposely, with malicious intent, causes the discontinuance of a short-term diversion through the complaint process provided in subsection (5)(a) and the complaint is found to be invalid and frivolous, the person is, upon conviction, guilty of a misdemeanor and shall be fined in an amount not to exceed \$500.

(7) This section does not limit the remedies available to an appropriator to enjoin or to seek damages from a person appropriating water under this section.

(8) A civil action instituted to enjoin or seek damages from a person appropriating water pursuant to this section must be commenced against the lessee. The lessor is not a necessary party to a civil action. The lessee has the burden of establishing that the lessee's use does not have an adverse effect on a prior appropriator of water.

(9) (a) *A local government entity, as defined in 7-6-602, is not subject to the requirements of subsections (3)(a) and (4) when conducting dust abatement that was not scheduled or contracted for 30 days or more prior to the use of the water.*

(b) *A local government entity that does not publish notice as provided in subsection (4) shall post a copy of the lease agreement at the point of diversion at least 24 hours prior to and during the time that water is diverted."*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 27, 2003

CHAPTER NO. 50

[HB 248]

AN ACT ENCOURAGING HUNTING AND FISHING BY MONTANA YOUTH BY PROVIDING THAT THE FIRST TIME A RESIDENT YOUTH WHO IS 12 YEARS OF AGE OR OLDER AND LESS THAN 18 YEARS OF AGE APPLIES FOR A HUNTING LICENSE, THE YOUTH IS ENTITLED TO RECEIVE A YOUTH COMBINATION SPORTS LICENSE FREE OF CHARGE; AMENDING SECTION 87-2-805, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-805, MCA, is amended to read:

"87-2-805. Persons under eighteen years of age — youth combination sports license. (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B or B-4 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, under 15 years of age may purchase Class A-3 and A-5 licenses at a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license at a price that, rounded to the nearest dollar, is 46% of the fee paid for the Class AAA combination sports license by a resident who is 18 years of age or older and under 62 years of age. *A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.*

(b) The youth combination sports license includes:

- (i) a conservation license;
- (ii) a fishing license;
- (iii) an upland game bird license;
- (iv) an elk license; and
- (v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license at a price that is 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license at 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(e) A person who lawfully purchases ~~a~~ *or is granted a free* youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased *or granted free* after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

- (i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and
- (ii) a monetary fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license."

Section 2. Effective date. [This act] is effective May 1, 2003.

Approved February 27, 2003

CHAPTER NO. 51

[HB 406]

AN ACT PERMITTING THE DEPARTMENT OF REVENUE TO DEPOSIT MONEY IT HAS RECEIVED WITHIN A REASONABLE TIME AFTER RECEIPT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Deposit of money. Money received by the department from the collection of taxes, fees, and debts is not subject to the timely deposit requirements of 17-6-105(6). The department shall deposit all money within a reasonable time after receipt.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 27, 2003

CHAPTER NO. 52

[SB 7]

AN ACT CREATING AND REVISING DEFINITIONS OF CERTAIN LOCAL, STATE, TRIBAL, AND FEDERAL OFFICIALS TO PROVIDE EXEMPTIONS UNDER LOBBYING LAWS; REVISING DEFINITIONS OF "LOBBYING", "LOBBYING FOR HIRE", AND "PAYMENT TO INFLUENCE OFFICIAL ACTION"; EXTENDING THE TIME TO HEAR AN APPEAL FOR A DENIED LICENSE TO LOBBY; PROVIDING EXEMPTIONS TO PAYMENT OF THE LOBBYIST LICENSE FEE; AMENDING SECTIONS 5-7-102 AND 5-7-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-7-102, MCA, is amended to read:

"5-7-102. Definitions. The following definitions apply in this chapter:

(1) "Appointed state official" means an individual who is appointed:

(a) to public office in state government by the governor or the chief justice of the Montana supreme court and who is subject to confirmation by the Montana senate;

(b) by the board of regents of higher education to serve either as the commissioner of higher education or as the chief executive officer of a campus of the Montana university system; or

(c) by the board of trustees of a community college to serve as president.

(1)(2) "Business" means:

(a) a holding or interest whose fair market value is greater than \$1,000; in a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and

(b) present or past employment from which benefits, including retirement allowances, are received.

(2)(3) "Commissioner" means the commissioner of political practices.

(3)(4) "Docket" means the register of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(5) "Elected federal official" means a person elected to a federal office, including but not limited to a member of the United States senate or house of representatives. The term includes an individual appointed to fill the unexpired term of an elected federal official and an individual who has been elected to a federal office but who has not yet been sworn in.

~~(4)~~(6) "Elected local official" means ~~a public official~~ an elected officer of a county, a consolidated government, an incorporated city or town, a school district, or a special district. The term includes an individual appointed to fill the unexpired term of an elected local official and an individual who has been elected to a local office but who has not yet been sworn in.

(7) "Elected state official" means an individual holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including but not limited to ~~legislators, public service commissioners, and district court judges~~ but not including legislators for the purposes of this chapter. The term includes an individual appointed to fill the unexpired term of an elected state official and an individual who has been elected to a statewide office but who has not yet been sworn in. ~~The term "official-elect" also applies to the offices.~~

(8) "Elected tribal official" means an elected member of a tribal council or other elected office filled by a vote of tribal members. The term includes an individual appointed to fill the unexpired term of an elected tribal official and an individual who has been elected to a tribal office but who has not yet been sworn in.

~~(5)~~(9) "Individual" means a human being.

(10) "Legislator" means an individual holding public office as a representative or a senator in the Montana legislature. The term includes an individual who has been elected to the legislature but who has not yet been sworn in.

~~(6)~~(11) (a) "Lobbying" means:

~~(a)~~(i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members of the legislature ~~by a person other than a member of the legislature or a public official;~~ and

~~(b)~~(ii) the practice of promoting or opposing official action by any public official.

(b) The term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed by a legislator, a public official, an elected local official, an elected federal official, or an elected tribal official while acting in an official governmental capacity.

~~(7)~~(12) "Lobbying for hire" includes activities of the officers, agents, attorneys, or employees of a principal who are paid, reimbursed, or retained by the principal ~~and whose duties include lobbying. If an individual is reimbursed only for his personal living and travel expenses, which together are less than \$1,000 per calendar year, that individual is not considered to be lobbying for hire to lobby.~~

~~(8)~~(13) (a) "Lobbyist" means a person who engages in the practice of lobbying for hire.

(b) Lobbyist does not include:

(i) an individual acting solely on ~~his~~ the individual's own behalf; or

(ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official on behalf of ~~his~~ *the lobbyist's* principal.

(c) Nothing in this ~~section~~ *subsection (13)* deprives an individual not lobbying for hire of the constitutional right to communicate with public officials.

~~(9)~~(14) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value.

~~(10)~~(15) "Payment to influence official action" means any of the following types of payment:

(a) direct or indirect payment to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for expenses, ~~excluding personal living expenses~~; or

(b) payment in support of or *for* assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

~~(11)~~(16) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision of state or local government, or other organization or group of persons.

~~(12)~~(17) "Principal" means a person who employs a lobbyist.

~~(13)~~(18) "Public official" means an ~~individual, elected or appointed,~~ *elected state official or an appointed state official* acting in ~~his~~ an official capacity for the state government. The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

~~(14)~~(19) "Unprofessional conduct" means:

(a) violating any of the provisions of this chapter;

(b) instigating action by a public official for the purpose of obtaining employment;

(c) attempting to influence the action of a public official on a measure pending or to be proposed by:

(i) promising financial support; or

(ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or

(d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official."

Section 2. Section 5-7-103, MCA, is amended to read:

"5-7-103. Licenses — fees — eligibility — waiver. (1) Any adult of good moral character who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained from and must be filed in the office of the commissioner. Upon approval of the application and receipt of the license fee by the commissioner, a license must be issued that entitles the licensee to practice lobbying on behalf of one or more enumerated principals. The license fee is \$150 for each lobbyist *except as provided in subsection (5) or unless the fee is waived for hardship reasons under this section.* Each license expires on December 31 of each even-numbered year or may be terminated at the request of the lobbyist. A lobbyist who believes that payment of the license fee may constitute a hardship

may apply to the commissioner for a waiver of the fee required by this section. The commissioner may waive all or a portion of the license fee upon proof by the lobbyist that payment of the fee constitutes a hardship.

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording the applicant a hearing. The hearing must be held and the decision entered within ~~10~~ 20 business days of the date of the filing of the application, *not including the date on which the application is filed*.

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines collected under this chapter must be deposited in the state treasury.

(4) The commissioner shall deposit the license fee provided for in subsection (1) as follows:

(a) \$50 in the general fund; and

(b) \$100 in the state special revenue account provided for in 5-11-1112.

(5) *A lobbyist who receives from one or more principals payments to lobby that total less than \$1,000 in a calendar year does not have to pay the license fee established in subsection (1). The commissioner shall develop a form to be signed by the lobbyist and the principal or principals certifying that the payments total less than \$1,000 for a calendar year. This subsection only exempts the lobbyist from paying the license fee. A lobbyist is required to file an application to lobby under this section and the principal or principals shall file all reports required under this chapter and rules adopted by the commissioner.*

~~(5)~~(6) The commissioner may adopt rules to implement the waiver provisions of ~~subsection~~ subsections (1) and (5)."

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved February 26, 2003

CHAPTER NO. 53

[HB 22]

AN ACT GENERALLY REVISING AND UPDATING PROVISIONS GOVERNING TRAFFIC CONTROL DEVICES AND PEDESTRIAN CONTROL SIGNALS; ESTABLISHING VEHICLE OPERATOR REQUIREMENTS WHEN LANE USE CONTROL SIGNALS ARE IN PLACE; AMENDING SECTIONS 61-8-201, 61-8-202, 61-8-203, 61-8-207, 61-8-208, 61-8-209, AND 61-8-210, MCA; AND REPEALING SECTION 61-8-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-201, MCA, is amended to read:

"61-8-201. Obedience to traffic control devices — exception for emergency certain vehicles and funeral processions. (1) ~~The~~ *Unless otherwise directed by a peace officer, flag person, crossing guard, or public safety worker, the driver of a vehicle shall obey the instructions of an official traffic*

control device applicable to ~~his~~ *the driver's* vehicle and placed in accordance with the provisions of this chapter. ~~unless otherwise directed by a highway patrol officer or police officer, subject to the exceptions granted in this chapter to the~~ *The driver of an authorized emergency vehicle, a police vehicle, or a highway patrol vehicle and to the driver of a motor vehicle in a funeral procession are exempt from obedience to official traffic control devices as provided in this chapter.*

(2) A provision of this chapter for which ~~signs~~ *traffic control devices* are required may not be enforced against an alleged violator if at the time and place of the alleged violation an official ~~sign~~ *traffic control device* is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section *of this chapter* does not state ~~the signs that~~ *official traffic control devices* are required, the section is effective even though ~~no signs~~ *traffic control devices* are not erected or in place.

(3) *Official traffic control devices that are placed or held in position substantially conforming to the requirements of this chapter and the requirements of the uniform system adopted by the department of transportation pursuant to 61-8-202 are presumed to have been placed by an official act or at the discretion of a lawful authority.*

Section 2. Section 61-8-202, MCA, is amended to read:

"61-8-202. Department of transportation to adopt sign manual. The department of transportation shall adopt a manual for a uniform system of traffic control devices consistent with this chapter for use upon highways within the state. ~~This uniform system shall~~ *The manual adopted by the department of transportation must correlate with and so far as possible conform to the manual on uniform traffic control devices, as amended Manual on Uniform Traffic Control Devices, as amended, published by the United States federal highway administration.*"

Section 3. Section 61-8-203, MCA, is amended to read:

"61-8-203. Department of transportation to sign place traffic control devices on all state highways it maintains and approve traffic control devices on highways under its jurisdiction. (1) The department of transportation shall place and maintain traffic control devices, conforming to its manual and specifications, upon all ~~state~~ *highways maintained by the department of transportation that the department* ~~it~~ considers necessary to ~~indicate and to~~ carry out *the provisions of* this chapter and chapter 9 or to regulate, warn, or guide traffic.

(2) A local authority *or other entity* may not place or maintain a traffic control device upon a highway under the jurisdiction of the department *of transportation* except ~~by~~ *with the latter's department's* permission.

(3) ~~Only the department may erect and maintain these traffic control devices conforming to its manual and specifications on a controlled access highway or controlled access facility.~~ *The unauthorized* erection of a sign, marker, ~~or emblem, or other traffic control device on a controlled access facility or controlled access highway under the jurisdiction of the department of transportation by any other public authority, or agent, or by a private individual, firm, or corporation~~ *entity* is ~~unlawful and~~ a misdemeanor and is punishable as provided in 61-8-712.

(4) The erection or maintenance of a sign, marker, emblem, or traffic control device on a ~~state highway except a controlled access highway or~~

~~controlled access facility, under the jurisdiction of the department of transportation is subject to the rules and specifications that the department adopts and publishes in the interest of public safety and convenience."~~

Section 4. Section 61-8-207, MCA, is amended to read:

"61-8-207. Traffic control signal legend. ~~Whenever~~ Except for lane use control signals and special pedestrian control signals carrying a legend, whenever traffic is controlled by traffic control signals exhibiting the words "Go", "Caution", or "Stop" or exhibiting different colored lights or colored lighted arrows successively one at a time or with arrows in combination, the following colors only must be used and the terms and only the colors green, red, and yellow may be used. The lights must indicate and apply to drivers of vehicles and pedestrians as follows:

~~(1) green alone or "Go":~~

(1) (a) Vehicular traffic facing ~~the~~ a circular green signal may proceed straight through or turn left or right unless a ~~sign~~ traffic control device at the place prohibits either turn. ~~But~~ However, vehicular traffic, including vehicles turning right or left, must yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.

(b) Vehicular traffic facing a green arrow signal shown alone or in combination with another indication may cautiously enter the intersection only to make either the movement indicated by the arrow or another movement that is permitted by another indication shown at the same time. Vehicular traffic making the movements permitted by this subsection (1)(b) must yield the right-of-way to pedestrians who are lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

~~(b)(c) Pedestrians~~ Unless otherwise directed by a pedestrian control signal as provided in 61-8-208, a pedestrian facing ~~the~~ a green signal, except when the only green signal is a turn arrow, may proceed in the direction of the green signal across the roadway within any marked or unmarked crosswalk. A driver of a vehicle shall yield the right-of-way to the pedestrian.

~~(2) yellow alone or "Caution" when shown following the green or "Go" signal:~~

(2) (a) Vehicular traffic facing ~~the~~ a steady circular yellow or yellow arrow signal is warned that the traffic movement permitted by the related green signal is being terminated or that a red or "Stop" signal will be exhibited immediately thereafter. ~~and vehicular~~ Vehicular traffic may not enter the intersection when the red or "Stop" signal is exhibited after the yellow signal.

(b) ~~Pedestrians~~ Unless otherwise directed by a pedestrian control signal as provided in 61-8-208, a pedestrian facing ~~the signals are~~ a steady circular yellow or yellow arrow signal is advised that there is insufficient time to cross the roadway, and a pedestrian then starting to cross shall yield the right-of-way to ~~all vehicles~~ before a red indication is shown.

~~(3) red alone or "Stop":~~

(3) (a) Vehicular traffic facing ~~the~~ a steady circular red signal must stop at a marked stop line. If there is not a marked stop line, vehicular traffic must stop before entering the crosswalk on the near side of the intersection. ~~or, if none, then~~ If there is not a marked crosswalk, vehicular traffic must stop before entering the intersection and, except as provided in subsection (3)(c), must remain standing until ~~green or "Go"~~ an indication to proceed is shown ~~alone,~~

~~until a right turn can safely be made, or until a left turn can safely be made from the far left lane if the turn is made from a one-way street onto another one-way street going left. In making the turn, vehicular traffic must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. If a traffic sign legend indicating that no right turn on red or no left turn on red may be made after a stop is posted at the intersection, the movement cannot be made until green or "Go" is shown alone.~~

~~(b) A pedestrian facing a signal may not enter the roadway unless the pedestrian can do so safely and without interfering with any vehicular traffic. Vehicular traffic facing a steady red arrow signal may not enter the intersection to make the movement indicated by the arrow and must stop at a marked stop line unless the traffic is entering the intersection to make a movement indicated by another signal. If there is not a marked stop line, vehicular traffic must stop before entering the crosswalk on the near side of the intersection. If there is not a marked crosswalk, vehicular traffic must stop before entering the intersection and must remain standing until an indication is shown that permits movement.~~

~~(c) (i) Except when a traffic control device is in place that prohibits a turn, vehicular traffic facing a steady circular red signal may cautiously enter the intersection to turn right or to turn left from a one-way street onto another one-way street after stopping as required under subsection (3)(a). After stopping, the operator of a vehicle shall yield the right-of-way to any vehicle in the intersection or approaching the intersection close enough to constitute an immediate hazard during the time that the operator is moving within the intersection.~~

~~(ii) An operator of a vehicle entering an intersection as provided in subsection (3)(c)(i) shall yield the right-of-way to pedestrians within the intersection or within an adjacent crosswalk.~~

~~(d) Unless otherwise directed by a pedestrian control signal as provided in 61-8-208, a pedestrian facing a steady circular red or red arrow signal alone may not enter the roadway.~~

~~(4) red with a green arrow:~~

~~(a) Vehicular traffic facing a signal may cautiously enter the intersection only to make the movement indicated by the arrow but must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.~~

~~(b) A pedestrian facing a signal may not enter the roadway unless the pedestrian can do so safely and without interfering with vehicular traffic.~~

~~(5) traffic control signal at a place other than an intersection:~~

~~(4) (a) In the event If an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section are applicable except as to those provisions that by their very nature can have no application.~~

~~(b) Any A required stop required must be made at a sign or marking on the pavement indicating where the stop must be made, but in the absence of any sign or marking, the stop must be made at the signal."~~

Section 5. Section 61-8-208, MCA, is amended to read:

"61-8-208. Pedestrian control signals. Whenever special pedestrian control signals exhibiting the words "Walk" or "Wait" or "Don't Walk" or symbols

of a walking person or an upraised palm are in place, ~~such~~ the signals ~~shall~~ indicate as follows:

(1) ~~Walk. Pedestrians~~ A pedestrian facing ~~such~~ a "Walk" signal or a walking person symbol may proceed across the roadway in the direction of the signal and ~~shall be given the right-of-way by the drivers operators~~ of all vehicles ~~shall yield the right-of-way to the pedestrian.~~

(2) ~~Wait or Don't Walk. No~~ A pedestrian ~~shall~~ may not start to cross the roadway in the direction of ~~such~~ a signal exhibiting a flashing or steady "Don't Walk" signal or upraised palm symbol, but ~~any~~ a pedestrian who has partially completed ~~his~~ crossing on the ~~walk~~ "Walk" signal or walking person symbol shall proceed to a sidewalk or safety island while the ~~wait~~ "Don't Walk" signal or upraised palm symbol is showing. An operator of a vehicle shall yield the right-of-way to a pedestrian who has partially completed crossing and is proceeding to the sidewalk or safety island.

(3) A pedestrian may not start to cross a roadway in the direction of a steady "Don't Walk" signal or upraised palm symbol."

Section 6. Section 61-8-209, MCA, is amended to read:

"61-8-209. Flashing signals. (1) Whenever an illuminated flashing red or yellow signal is used in a traffic ~~sign or signal~~ control device, it ~~shall require~~ requires obedience by vehicular traffic as follows:

(a) ~~Flashing red (stop signal).~~ When a red lens is illuminated with rapid intermittent flashes, ~~drivers of vehicles~~ an operator of a vehicle shall stop at a marked stop line. If there is no marked stop line, an operator shall stop before entering the nearest crosswalk at an intersection, ~~or at a limit line when marked or, if none, then before entering the intersection, and the~~ If there is no crosswalk, an operator shall stop at the point nearest the intersecting roadway where the operator has a view of approaching traffic. The right to proceed ~~shall be~~ is subject to the rules applicable after making a stop at a stop sign, as provided in 61-8-344.

(b) ~~Flashing yellow (caution signal).~~ When a yellow lens is illuminated with rapid intermittent flashes, ~~drivers of vehicles~~ the operator of a vehicle may proceed through the intersection or past ~~such~~ the flashing yellow signal only with caution.

(2) This section ~~shall not~~ does not apply at railroad grade crossings. Conduct of ~~drivers of vehicles~~ an operator of a vehicle approaching a railroad grade crossings ~~shall be~~ crossing is governed by the ~~rules as set forth in provisions of~~ 61-8-347."

Section 7. Lane use control signals. When lane use control signals are placed over individual lanes, the signals indicate and apply to operators of vehicles as follows:

(1) An operator of a vehicle may drive in the lane over which a steady downward green arrow signal is located.

(2) An operator of a vehicle must be prepared to vacate, in a safe manner, the lane over which a steady yellow X signal is located because a lane control change is being made to a steady red X signal.

(3) An operator of a vehicle may not use the lane over which the steady red X signal is located.

(4) An operator of a vehicle may use a lane over which a steady white two-way left-turn arrow signal is located for a left turn but not for through travel. The operator must be aware that common use of the lane by oncoming vehicular traffic is also permitted.

(5) An operator of a vehicle may use a lane over which a steady white one-way left-turn arrow signal is located for a left turn but not for through travel.

Section 8. Section 61-8-210, MCA, is amended to read:

“61-8-210. Display of unauthorized signs, signals, or markings. (1) ~~No~~ A person ~~shall~~ *may not* place, maintain, or display upon or in view of ~~any~~ a highway any unauthorized sign, signal, marking, or device ~~which that~~ purports to be or is an imitation of or resembles an official traffic control device, ~~or railroad sign, or signal, or which that~~ attempts to direct the movement of traffic, or ~~which that~~ hides from view or interferes with the effectiveness of any official traffic control device ~~or any railroad sign or signal.~~

(2) ~~No~~ A person ~~shall~~ *may not* place or maintain ~~nor shall any~~ and a public authority ~~may not permit upon any highway any traffic sign or signal bearing thereon any~~ commercial advertising *on an official traffic control device on a highway, except for business signs included as a part of official motorist service panels or roadside area information panels approved by the department of transportation.*

(3) This section ~~shall not be deemed to~~ *does not* prohibit the erection of ~~signs~~ upon private property adjacent to highways ~~of signs giving that give~~ useful directional information and *that are* of a type that cannot be mistaken for official signs.

(4) ~~The prohibition of this section shall not apply to portable “Caution” signs placed in the vicinity of schools at those times during which school children are going to and coming from school.”~~

Section 9. Repealer. Section 61-8-205, MCA, is repealed.

Section 10. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 61, chapter 8, part 2, and the provisions of Title 61, chapter 8, part 2, apply to [section 7].

Approved February 28, 2003

CHAPTER NO. 54

[HB 51]

AN ACT GENERALLY REVISING THE LICENSURE OF PERSONAL-CARE FACILITIES; CHANGING THE NAME OF “PERSONAL-CARE FACILITY” TO “ASSISTED LIVING FACILITY” FOR PURPOSES OF HEALTH CARE FACILITY LICENSURE; REVISING THE REQUIREMENTS FOR THE TYPES OF RESIDENTS SERVED BY ASSISTED LIVING FACILITIES; PROVIDING FOR A NEW CATEGORY C THAT CLASSIFIES COGNITIVELY IMPAIRED RESIDENTS WHO ARE SERVED BY ASSISTED LIVING FACILITIES FOR LICENSURE PURPOSES; AND AMENDING SECTIONS 39-3-406, 50-5-101, 50-5-225, 50-5-226, 50-5-227, 50-5-1202, 50-8-101, 52-1-104, 52-3-811, 53-6-101, AND 87-2-802, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

“39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, or in an outside sales capacity, as defined in 29 CFR 541.5;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or ~~personal care~~ *assisted living* facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person 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.

(p) an employee employed in domestic service employment to provide live-in companionship services, as defined in 29 CFR 552.6, for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or

one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the

employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation."

Section 2. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "*Activities of daily living*" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

~~(2)~~(3) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

~~(3)~~(4) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection ~~(3)~~ (4), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

~~(4)~~(5) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(6) "*Assisted living facility*" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

~~(5)~~(7) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

~~(6)~~(8) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(7)~~(9) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

~~(8)~~(10) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

~~(9)~~(11) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

~~(10)~~(12) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

~~(11)~~(13) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(14) "*Congregate*" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

~~(12)~~(15) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

~~(13)~~(16) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

~~(14)~~(17) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(15)~~(18) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

~~(16)~~(19) "Federal acts" means federal statutes for the construction of health care facilities.

~~(17)~~(20) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(18)~~(21) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. ~~The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.~~ The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care

facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.

~~(19)~~ (22) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

~~(20)~~ (23) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(21)~~ (24) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(22)~~ (25) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(23)~~ (26) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(24)~~ (27) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients, but does not include critical access hospitals.

~~(25)~~ (28) "Infirmiry" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmiry—A" provides outpatient and inpatient care;

(b) an "infirmiry—B" provides outpatient care only.

~~(26)~~ (29) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

~~(27)~~ (30) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

~~(28)~~ (31) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(32) *"Licensed health care professional" means a licensed physician, physician assistant-certified, advanced practice registered nurse, or registered nurse, who is practicing within the scope of the license issued by the department of labor and industry.*

~~(29)~~ (33) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

~~(30)~~ (34) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

~~(31)~~ (35) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(32)~~ (36) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(33)~~ (37) "Offer" means the representation by a health care facility that it can provide specific health services.

~~(34)~~ (38) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

~~(35)~~ (39) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

~~(36)~~ (40) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(37)~~ (41) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(38)~~ (42) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(39)~~ "Personal care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(43) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

~~(40)~~ (44) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

~~(41)~~ (45) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(42)~~ (46) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(43)~~ (47) "Residential care facility" means an adult day-care center, an adult foster care home, ~~a personal care~~ an assisted living facility, or a retirement home.

~~(44)~~ (48) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(45)~~ (49) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(46)~~ (50) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(47)~~ (51) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(48)~~ (52) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

~~(49)~~ (53) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 3. Section 50-5-225, MCA, is amended to read:

"50-5-225. Personal-care Assisted living facilities — services to residents. ~~A personal-care facility must provide the following services to facility residents:~~ (1) *An assisted living facility shall, at a minimum, provide or make provisions for:*

~~(1)(a) residential personal services, such as laundry, housekeeping, food service, and either providing or making available provision for local transportation;~~

~~(2)(b) personal assistance services, such as assistance by staff as required by residents in eating, walking, dressing, grooming, and similar routine living tasks assistance with activities of daily living, as provided for in the facility admission agreement and that do not require the use of a licensed health care professional or a licensed practical nurse;~~

~~(3)(c) recreational activities; and~~

~~(4)(d) supervision of assistance with self-medication;~~

~~(e) 24-hour onsite supervision by staff; and~~

~~(f) assistance in arranging health-related services, such as medical appointments and appointments related to hearing aids, glasses, or dentures.~~

~~(2) An assisted living facility may provide, make provisions for, or allow a resident to obtain third-party provider services for:~~

~~(a) the administration of medications consistent with applicable laws and regulations; and~~

~~(b) skilled nursing care or other skilled services related to temporary, short-term, acute illnesses, which may not exceed 30 consecutive days for one episode or more than a total of 120 days in 1 year."~~

Section 4. Section 50-5-226, MCA, is amended to read:

"50-5-226. Placement in personal-care assisted living facilities. (1) ~~A personal-care~~ *An assisted living facility may provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under 50-5-227.*

~~(2) A resident of a personal-care~~ *An assisted living facility licensed as a category A facility under 50-5-227 may obtain third-party provider services for skilled nursing care for no more than 20 consecutive days at a time. may not admit or retain a category A resident unless each of the following conditions is met:*

(a) *The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.*

(b) *The resident may not have a stage 3 or stage 4 pressure ulcer.*

(c) *The resident may not have a gastrostomy or jejunostomy tube.*

(d) *The resident may not require skilled nursing care or other skilled services on a continued basis except for the administration of medications consistent with applicable laws and regulations.*

(e) *The resident may not be a danger to self or others.*

(f) *The resident must be able to accomplish activities of daily living with supervision and assistance based on the following:*

(i) *the resident may not be consistently and totally dependent in four or more activities of daily living as a result of a cognitive or physical impairment; and*

(ii) *the resident may not have a severe cognitive impairment that renders the resident incapable of expressing needs or making basic care decisions.*

(3) ~~A resident of a personal care~~ *An assisted living facility licensed as a category B facility under 50-5-227 must have a signed statement from a physician agreeing to the resident's admission to the facility if the resident is may not admit or retain a category B resident unless each of the following conditions is met:*

(a) ~~in need of~~ *The resident may require skilled nursing care or other services for more than 30 days for an incident, for more than 120 days a year that may be provided or arranged for by either the facility or the resident, and as provided for in the facility agreement;*

~~(b) in need of medical, physical, or chemical restraint;~~

~~(c) nonambulatory or bedridden;~~

~~(d) incontinent to the extent that bowel or bladder control is absent; or~~

~~(e) unable to self administer medications.~~

(b) *The resident may be consistently and totally dependent in more than four activities of daily living.*

(c) *The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.*

(d) *The resident may not be a danger to self or others.*

(e) *The resident must have a practitioner's written order for admission as a category B resident and written orders for care.*

~~(4)(f) A~~ *The resident of a category B personal care facility who needs skilled nursing care must have a signed statement health care assessment, renewed on a quarterly basis by a physician, a physician assistant certified, an advanced practice registered nurse, or a registered nurse, whose work is unrelated to the operation of the facility and licensed health care professional who:*

~~(a)~~ *(i) actually visited the facility within the calendar quarter covered by the statement assessment;*

~~(b)~~ *(ii) has certified that the particular needs of the resident can be adequately met in the facility; and*

~~(e)~~(iii) has certified that there has been no significant change in health care status that would require another level of care.

(4) An assisted living facility licensed as a category C facility under 50-5-227 may not admit or retain a category C resident unless each of the following conditions is met:

(a) The resident has a severe cognitive impairment that renders the resident incapable of expressing needs or of making basic care decisions.

(b) The resident may be at risk for leaving the facility without regard for personal safety.

(c) Except as provided in subsection (4)(b), the resident may not be a danger to self or others.

(d) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

(5) For category B and C residents, the assisted living facility shall specify services that it will provide in the facility admission criteria.

~~(5)~~(6) The department shall develop standardized forms and education and training materials to provide to the ~~personal-care assisted living~~ facilities and to the ~~physicians, physician assistants certified, advanced practice registered nurses, or registered nurses licensed health care professionals~~ who are responsible for the signed statements provided for in subsection ~~(4)~~ (3)(f). The use of the standardized forms is voluntary.

~~(6)~~(7) The department shall provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, the resident's ~~physician~~ practitioner of:

(i) physical and mental standards for residents of ~~personal-care assisted living~~ facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while ~~the resident~~ ~~in~~ lives at the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by individuals referred to in ~~subsection~~ subsections (3) and (4);

(c) a method by which the results of any screening decision made pursuant to rules established under subsection ~~(6)(b)~~ (7)(b) may be appealed by the facility operator or by or on behalf of a resident or prospective resident;

(d) standards for operating a category A ~~personal-care assisted living~~ facility, including standards for the physical, structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of a facility and the storage and administration of over-the-counter and prescription medications; and

(e) standards for operating a category B ~~personal-care assisted living~~ facility, which must include the standards for a category A ~~personal-care assisted living~~ facility and additional standards for assessment of residents, care planning, qualifications and training of staff, ~~restraint use and reduction,~~

prevention and care of pressure sores, and incontinence care, ~~and the storage and administration of drugs; and~~

(f) standards for operating a category C assisted living facility, which must include the standards for a category B assisted living facility and additional standards for resident assessment, the provision of specialty care to residents with cognitive impairments, and additional qualifications of and training for the administrator and direct-care staff."

Section 5. Section 50-5-227, MCA, is amended to read:

"50-5-227. Licensing personal care assisted living facilities. (1) The department shall by rule adopt standards for licensing and operation of ~~personal care assisted living~~ facilities to implement the provisions of 50-5-225 and 50-5-226.

(2) The following licensing categories must be used by the department in adopting rules under subsection (1):

(a) category A—a facility ~~providing personal care to residents who may not be:~~

~~(i) in need of skilled nursing care;~~

~~(ii) in need of medical, chemical, or physical restraint;~~

~~(iii) nonambulatory or bedridden;~~

~~(iv) incontinent to the extent that bowel or bladder control is absent; or~~

~~(v) unable to self-administer medications; or serving residents requiring the level of care as provided for in 50-5-226(2);~~

(b) category B—a facility providing ~~personal care~~ skilled nursing care or other skilled services to five or fewer residents who ~~may be:~~

~~(i) in need of skilled nursing care;~~

~~(ii) in need of medical, chemical, or physical restraint;~~

~~(iii) nonambulatory or bedridden;~~

~~(iv) incontinent to the extent that bowel or bladder control is absent; or~~

~~(v) unable to self-administer medications meet the requirements stated in 50-5-226(3); or~~

(c) category C facility providing services to residents with cognitive impairments requiring the level of care stated in 50-5-226(4).

(3) A single facility meeting the applicable requirements for a category A facility may additionally be licensed to provide category B or category C services with the approval of the department.

~~(3)(4)~~ The department may by rule establish license fees, inspection fees, and fees for patient screening. Fees must be reasonably related to service costs."

Section 6. Section 50-5-1202, MCA, is amended to read:

"50-5-1202. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Long-term care facility" means a licensed facility that provides skilled nursing care or intermediate nursing care or that is ~~a personal care an assisted living~~ facility, as defined in 50-5-101.

(3) "Medical symptom" means an indication of a physical or psychological condition or of a physical or psychological need expressed by the patient.

(4) "Physician" includes an advanced practice registered nurse to the extent permitted by federal law.

(5) "Resident" means a person who lives in a long-term care facility.

(6) (a) "Safety devices" means side rails, tray tables, seatbelts, and other similar devices.

(b) The term does not include protective restraints as defined in 21 CFR 880.6760."

Section 7. Section 50-8-101, MCA, is amended to read:

"50-8-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Facility" means:

(a) nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for alcohol or drug treatment or emergency detoxification;

(b) community homes for persons with developmental disabilities, community homes for physically disabled persons, and adult foster family care homes;

(c) youth care facilities;

(d) public accommodations, including roominghouses, retirement homes, hotels, and motels;

(e) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

(f) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(g) ~~personal care~~ *assisted living* facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license."

Section 8. Section 52-1-104, MCA, is amended to read:

"52-1-104. Department authorized to provide and set standards for supplementary payments. (1) Except as provided in this section, the department ~~shall have the authority to~~ *may* provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind, or disabled under Title XVI of the Social Security Act of the United States or any future amendments ~~thereto~~ *to that act*.

(2) The department ~~shall have the authority to~~ *may* establish standards of assistance and apply them uniformly throughout the state and ~~to~~ *may*

determine individuals eligible for and the amount of ~~such~~ supplementary payments under federal and state guidelines.

(3) The department may not provide supplementary payments under subsection (1) for persons who are residents of category B ~~personal-care assisted living~~ facilities licensed pursuant to 50-5-227."

Section 9. Section 52-3-811, MCA, is amended to read:

"52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a person with a developmental disability known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department or its local affiliate; or

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department that may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the person with a developmental disability resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a person with a developmental disability in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home or complex, nursing home, group home, adult foster care home, adult day-care center, or ~~personal-care assisted living~~ facility or an agency or individual that provides home health services or personal care in the home;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;

(g) a peace officer or other law enforcement official;

(h) a person providing services to an older person or a person with a developmental disability pursuant to a contract with a state or federal agency; and

(i) an employee of the department while in the conduct of the employee's duties.

(4) Any other persons or entities may, but are not required to, submit a report in accordance with subsection (1)."

Section 10. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program — authorization of services.

(1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The department of public health and human services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

- (d) dental services;
- (e) physical therapy services;
- (f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;
- (g) clinical social worker services;
- (h) prescribed drugs, dentures, and prosthetic devices;
- (i) prescribed eyeglasses;
- (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
- (k) inpatient psychiatric hospital services for persons under 21 years of age;
- (l) services of professional counselors licensed under Title 37, chapter 23;
- (m) hospice care, as defined in 42 U.S.C. 1396d(o);
- (n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;
- (o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and
- (p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through (3)(p) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for ~~personal-care~~ *assisted living* facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 11. Section 87-2-802, MCA, is amended to read:

"87-2-802. Veterans in VA hospitals and residents of state institutions and long-term care facilities, nursing care facilities, ~~personal-care assisted living~~ facilities, and community homes for persons with disabilities. (1) ~~Any~~ A veteran who is a patient residing at a hospital operated by the department of veterans affairs, within or outside the state, and residents of all institutions under the jurisdiction of the department of public health and human services may fish without a license. The residents shall carry a permit on a form prescribed by the department and signed by the superintendent of the institution in lieu of a license.

(2) Upon annual application by managers or directors of licensed long-term care facilities and ~~personal-care assisted living~~ facilities as defined in 50-5-101, community homes for persons with developmental disabilities licensed under 53-20-305, and community homes for persons with severe disabilities licensed under 52-4-203, the department shall allow supervised residents to fish without the otherwise required license during any activities approved by the facilities and homes."

Section 12. Name change — directions to code commissioner. Wherever a reference to a personal-care facility appears in legislation enacted by the 2003 legislature, the code commissioner is directed to change it to a reference to an assisted living facility.

Approved February 28, 2003

CHAPTER NO. 55

[HB 80]

AN ACT ALLOWING THE REDUCED FARM RATE GVW FEE TO BE APPLICABLE TO VEHICLES HAULING TIMBER HARVESTED ON A RANCH, FARM, ORCHARD, OR DAIRY TO MARKET; AMENDING SECTION 61-10-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-206, MCA, is amended to read:

“61-10-206. Special fees — certain farm vehicles. (1) Except for motortrucks owned and operated by cooperative associations or cooperative marketing associations, there must be paid and collected annually a fee equal to 35% of the fees provided in ~~Schedule I and Schedule II~~ 61-10-201 on:

(a) motortrucks owned and operated by ranchers or farmers in:

(i) the transportation of their own ranch, farm, orchard, or dairy products from point of production to market; ~~or of~~

(ii) the transportation of timber harvested on their own ranch, farm, orchard, or dairy from point of harvest to market;

(iii) the transportation of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy; ~~or in~~

(iv) the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard, or dairy; or

(v) the transportation of supplies or commodities to be used on the farm, orchard, or dairy; and

(b) one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture.

(2) The minimum fee is \$6.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 28, 2003

CHAPTER NO. 56

[HB 114]

AN ACT GENERALLY REVISING LAWS RELATING TO THE CAPITOL COMPLEX ADVISORY COUNCIL; CLARIFYING THAT THE DEPARTMENTS OF ADMINISTRATION AND FISH, WILDLIFE, AND PARKS SHARE THE COSTS ASSOCIATED WITH COUNCIL OPERATIONS; REQUIRING THE COUNCIL TO ADOPT AN ART AND MEMORIAL PLAN; REVISING CRITERIA FOR NAMING A STATE BUILDING, SPACE, OR ROOM IN THE CAPITOL COMPLEX AFTER AN INDIVIDUAL OR DISPLAYING A BUST, STATUE, MEMORIAL, MONUMENT, OR ART DISPLAY COMMEMORATING AN INDIVIDUAL OR EVENT; PERMITTING THE DEPARTMENT OF ADMINISTRATION TO APPROVE TEMPORARY

DISPLAYS IN THE CAPITOL COMPLEX OR ON THE CAPITOL COMPLEX GROUNDS; CHANGING THE AGENCY RESPONSIBLE FOR MAINTAINING AN INVENTORY OF ART AND MEMORIALS IN THE CAPITOL COMPLEX; PROVIDING FOR THE LONG-TERM PLACEMENT OF CERTAIN ITEMS IN THE CAPITOL OR ON THE CAPITOL COMPLEX GROUNDS; ENTRUSTING CERTAIN ITEMS TO THE MONTANA HISTORICAL SOCIETY; AND AMENDING SECTIONS 2-17-803, 2-17-804, 2-17-805, 2-17-807, AND 2-17-812, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-803, MCA, is amended to read:

“2-17-803. Capitol complex advisory council established — membership — staff services — compensation. (1) There is a capitol complex advisory council.

(2) The council consists of nine members as follows:

(a) two members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) two members of the senate appointed by the committee on committees on a bipartisan basis;

(c) a public representative appointed by the governor; and

(d) the director or the director’s designee of each of the following agencies:

(i) the Montana historical society established in 22-3-101;

(ii) the Montana arts council established in 2-15-1513;

(iii) the department of administration established in 2-15-1001; and

(iv) the department of fish, wildlife, and parks established in 2-15-3401.

(3) The council shall select a presiding officer, who may call meetings to conduct council business. The departments of administration and fish, wildlife, and parks shall provide staff services to the council *and share the costs associated with council operations.*

(4) (a) The council member appointed under subsection (2)(c) is entitled to compensation not to exceed the daily allowance provided for in 5-2-301(3) for compensation of legislators for each day in which the member is actually and necessarily engaged in performing council duties and to travel expense reimbursement as provided in 2-18-501 through 2-18-503.

(b) A council member designated under subsection (2)(d) is not entitled to compensation for services as a member of the council.

(c) A council member appointed under subsection (2)(a) or (2)(b) is entitled to compensation and expenses as provided in 5-2-302.”

Section 2. Section 2-17-804, MCA, is amended to read:

“2-17-804. Council duties and responsibilities. (1) The council shall:

(a) *adopt an art and memorial plan for the placement of art and memorials in the capitol complex and on the capitol complex grounds;*

~~(a)~~(b) *review proposals for permanent long-term displays of up to 50 years, subject to renewal, in the capitol complex and on the capitol complex grounds or and for the naming of state buildings, spaces, and rooms in the capitol complex;*

~~(b)~~(c) advise the legislature on the placement of busts, statues, memorials, monuments, or art displays of a ~~permanent~~ *long-term* nature ~~within~~ *in* public areas of the capitol complex *and on the capitol complex grounds*, including the executive residence and the original governor's mansion;

~~(c)~~(d) advise the department of administration on interior decoration of the capitol; and

~~(d)~~(e) advise the department of fish, wildlife, and parks on grounds maintenance and grounds displays.

(2) In advising the legislature on ~~permanent~~ *long-term* displays, the council shall consider whether the bust, statue, memorial, monument, or art display:

(a) reasonably fits the *long-range* master plan for the capitol and adjacent grounds developed under 2-17-805;

(b) adversely alters the appearance of the ~~capitol or other~~ capitol complex ~~buildings~~;

(c) unreasonably affects foot traffic on the capitol complex;

(d) adversely impacts existing maintenance programs or the utility infrastructure;

(e) recognizes a person or event of statewide significance and relevance;

(f) has artistic merit in its design and construction;

(g) will be safely and aesthetically suited to its installation site; and

(h) has adequate funding for design, installation, and maintenance.

(3) By November 15 of each year preceding a legislative session, the council shall report to the legislature on requests that it has reviewed for naming buildings, *spaces, and rooms* and for ~~permanently~~ placing items in the capitol complex or on the capitol complex grounds. The report must include a recommendation to the legislature on whether reviewed requests meet the criteria established by this ~~section~~ *part*. If a request meets the criteria, the council shall recommend a timeframe during which the project should be authorized."

Section 3. Section 2-17-805, MCA, is amended to read:

"2-17-805. Function of department of administration — capitol area master plan — advice of capitol complex advisory council and legislative council. (1) With advice from the council, the departments of administration and fish, wildlife, and parks shall establish and maintain a long-range master plan for the orderly development ~~of state buildings in the immediate area~~ of the ~~capital city~~ *capitol complex*. The long-range master plan must be developed and maintained, with consideration given to the following factors:

(a) the needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management, and landscaping;

(b) the ordinances, plans, requirements, and proposed improvements of the city of Helena and Lewis and Clark County, based, without limitation, upon zoning regulations, population trends, and plans for rapid transit development; and

(c) any other factors that bear upon the orderly, integrated, and cooperative development of the state, the city of Helena, Lewis and Clark County, and state property in the ~~immediate area of the capital city~~ *capitol complex*.

(2) The legislative council shall consult with and advise the department of administration concerning the assignment of space in the capitol.

(3) The Montana historical society shall protect and preserve ~~the~~ *all publicly held*, permanent artwork in the capitol *complex* and request funding for periodic inspection, maintenance, and repair of the artwork from the trust fund established in 15-35-108 for protection of works of art in the state capitol and other cultural and aesthetic projects.

(4) The legislative council shall serve as a long-range building committee to recommend to the legislature and the department of administration construction and remodeling priorities for the capitol."

Section 4. Section 2-17-807, MCA, is amended to read:

"2-17-807. Approval for displays and naming buildings, spaces, and rooms. (1) A state building, *space, or room* in the capitol complex may not be named after an individual, ~~and~~ *or a bust, statue, memorial, monument, or art display* may not be ~~permanently displayed on a long-term basis~~ *in the capitol complex or on the capitol complex grounds unless the building, space, or room name or display is approved by the legislature and complies with this section* ~~part~~.

(2) A state building, *space, or room* in the capitol complex may not be named after an individual *or a bust, statue, memorial, monument, or art display commemorating an individual may not be displayed on a long-term basis in the capitol complex* unless the individual has been deceased for at least ~~5~~ *10* years.

(3) *A bust, statue, memorial, monument, or art display commemorating an event, including a military event, may not be displayed on a long-term basis in the capitol complex until 10 years after the end of the event.*

~~(3)~~(4) All busts, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

(5) *The department of administration may review and approve the temporary display of a bust, statue, memorial, monument, or art display for up to 1 year in the capitol complex or on the capitol complex grounds."*

Section 5. Section 2-17-812, MCA, is amended to read:

"2-17-812. Inventory of improvements. (1) The department of fish, wildlife, and parks shall maintain an inventory of commemorative displays, statues, artwork, plaques, and other improvements upon the grounds of the capitol complex, including the executive residence and original governor's mansion.

(2) The ~~department of administration~~ *Montana historical society* shall maintain an inventory of *all publicly held* commemorative displays, statues, artwork, ~~and plaques, and other improvements~~ *in the capitol building complex*.

(3) ~~Both departments~~ *agencies* shall make their inventories available to the council."

Section 6. Placement of certain busts, statues, memorials, monuments, and art displays. (1) The following busts, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

- (a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;
 - (b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, and the 1972 Montana constitutional convention;
 - (c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;
 - (d) the portraits of Joseph K. Toole and Wilbur Fiske Sanders;
 - (e) the statues of Wilbur Fiske Sanders, Jeanette Rankin, and Mike and Maureen Mansfield;
 - (f) the Montana statehood centennial bell;
 - (g) the gallery of outstanding Montanans;
 - (h) the Montana constitutional exhibit; and
 - (i) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors.
- (2) The following busts, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:
- (a) the statue of Thomas Francis Meagher;
 - (b) the plaque commemorating Donald Nutter; and
 - (c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project.
- (3) The statue by Robert Scriver entitled "symbol of the pros" is to be placed for up to 50 years, subject to renewal, on the capitol complex grounds.
- (4) The council shall determine the specific placement of the items identified in subsections (1) through (3).

Section 7. Certain items entrusted to Montana historical society. A bust, statue, memorial, monument, or art display in possession of the state that may have been associated with the capitol complex but is not listed under [section 6] is entrusted to the Montana historical society for storage or temporary display until a suitable location is identified, recommended for placement by the council, and approved by the legislature for long-term placement.

Section 8. Codification instruction. [Sections 6 and 7] are intended to be codified as an integral part of Title 2, chapter 17, part 8, and the provisions of Title 2, chapter 17, part 8, apply to [sections 6 and 7].

Approved February 28, 2003

CHAPTER NO. 57

[HB 121]

AN ACT PROVIDING THAT CERTAIN INCOME FROM THE MONTANA STATE HOSPITAL AND MONTANA MENTAL HEALTH NURSING CARE CENTER BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTION 53-1-413, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-413, MCA, is amended to read:

“53-1-413. Deposit of payments and collections. (1) Except as provided in 90-7-220, 90-7-221, and this section, the department shall deposit payments and collections of charges for a resident’s cost of care in the state treasury to the credit of the general fund.

(2) Payments and collections for services provided to residents of the Montana veterans’ home must be deposited in the special revenue account for the benefit of the home. Payments and collections for services provided to residents of the Montana chemical dependency treatment center must be deposited in the state special revenue account for the facility.

~~(3) Subject to 90-7-221, payments from a managed care organization that is contracting with the department to administer a mental health managed care program for services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in the state special revenue account, subject to appropriation by the legislature for the benefit of those institutions.~~

~~(4) Medicaid payments for services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in the federal special revenue fund and are subject to appropriation for the benefit of the mental health managed care program.”~~

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved February 28, 2003

CHAPTER NO. 58

[SB 136]

AN ACT CLARIFYING THAT A PUBLIC OFFICER MAY PARTICIPATE IN THE PROCEEDINGS OF OR ENGAGE IN ACTIVITIES ON BEHALF OF ORGANIZATIONS OR ASSOCIATIONS OF LOCAL GOVERNMENT OFFICIALS; AMENDING SECTION 2-2-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-121, MCA, is amended to read:

“2-2-121. Rules of conduct for public officers and public employees.

(1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) use public time, facilities, equipment, supplies, personnel, or funds for the officer’s or employee’s private business purposes;

(b) engage in a substantial financial transaction for the officer’s or employee’s private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer’s or employee’s agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A public officer or public employee may not participate in a proceeding when an organization, *other than an organization or association of local government officials*, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(5) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, *other than an organization or association of local government officials*, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(6) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(7) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(8) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 28, 2003

CHAPTER NO. 59

[HB 108]

AN ACT ELIMINATING THE PROHIBITION ON CORPORATE CONTRIBUTIONS AND EXPENDITURES ON BALLOT ISSUES; AMENDING SECTION 13-35-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in *Montana Chamber of Commerce v. Argenbright*, 226 F3d 1049 (9th Cir. 2000), the Ninth Circuit Court of Appeals held that corporate wealth has not distorted the ballot issue process in Montana and that therefore the first amendment to the United States Constitution does not permit the section 13-35-227, MCA, provision that prohibits a corporation from making a contribution or expenditure in connection with a ballot issue.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-35-227, MCA, is amended to read:

"13-35-227. Prohibited contributions from corporations. (1) ~~(a)~~ Except as provided in subsection (4), a corporation may not make a contribution or an expenditure in connection with a candidate, a ballot issue, or a political committee that supports or opposes a candidate, a ballot issue, or a political party.

~~(b) For purposes of this section, "corporation" refers to for profit and nonprofit corporations.~~

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation.

~~(4) The provisions of subsection (1) prohibiting corporate contributions to or expenditures in connection with a ballot issue do not apply to a nonprofit corporation formed for the purpose, among others, of promoting political ideas and that:~~

~~(a) does not engage in business activities;~~

~~(b) has no shareholders or other affiliated persons who have a private claim on the corporation's assets or earnings;~~

~~(c) does not accept foreign or domestic for profit corporations as members; and~~

~~(d) does not accept in the aggregate more than 5% annually of its total revenue from foreign or domestic for profit corporations.~~

~~(5)(4)~~ A person who violates this section is subject to the civil penalty provisions of 13-37-128.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 5, 2003

CHAPTER NO. 60

[HB 181]

AN ACT PROVIDING FOR THE REGULATION AND CERTIFICATION OF PERSONS AND ENTITIES THAT EUTHANIZE ANIMALS; ALLOWING A CERTIFIED AGENCY TO APPLY FOR REGISTRATION TO POSSESS CONTROLLED SUBSTANCES FOR THE PURPOSE OF EUTHANIZING ANIMALS; ALLOWING A CERTIFIED EUTHANASIA TECHNICIAN TO ADMINISTER CONTROLLED SUBSTANCES UNDER THE AGENCY'S LAWFUL POSSESSION WHEN THE AGENCY AND TECHNICIAN ARE CERTIFIED BY THE BOARD OF VETERINARY MEDICINE; PROVIDING AN EXEMPTION FOR CERTIFIED AGENCIES, CERTIFIED EUTHANASIA TECHNICIANS, AND SUPPORT PERSONNEL FROM OVERSIGHT BY THE BOARD OF PHARMACY WHEN POSSESSING OR ADMINISTERING APPROVED CONTROLLED SUBSTANCES FOR EUTHANASIA; PROVIDING AN EXEMPTION TO THE PRACTICE OF VETERINARY MEDICINE FOR CERTIFIED AGENCIES AND CERTIFIED EUTHANASIA TECHNICIANS WHO ARE CONDUCTING ANIMAL EUTHANASIA; AMENDING SECTIONS 37-7-103 AND 37-18-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 6] is to provide the most humane disposition possible of unwanted, stray, abandoned, discarded, or dangerous animals by providing for the certification of agencies and euthanasia technicians.

Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) “Certified agency” means a law enforcement agency, a public or private animal control agency, or a humane society organized for the prevention of cruelty to animals that has certification from the board to possess controlled substances approved for the purpose of euthanasia.

(2) “Certified euthanasia technician” means an employee of a certified agency or a person who is working under the supervision of a licensed veterinarian and who has been certified by the board to administer a controlled substance approved by the board for the purpose of euthanasia.

(3) “Controlled substance” means any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.

(4) "Euthanasia" means the act or practice of ending the life of an animal in order to end suffering or for some other humane purpose.

(5) "Person" means an individual, corporation, partnership, government or governmental subdivision or agency, trust, or any other legal entity.

Section 3. Powers of board — euthanasia certification. The board may:

(1) establish qualifications and prescribe the application format for certification as a certified agency or as a certified euthanasia technician and review each application for compliance with certification requirements;

(2) examine and determine the qualifications and fitness of applicants to operate as a certified agency or as a certified euthanasia technician;

(3) issue, renew, reinstate, deny, suspend, require voluntary surrender of, or revoke any certifications or temporary permits or impose other forms of discipline and enter into consent agreements and negotiated settlements with certified agencies or certified euthanasia technicians consistent with the provisions of this chapter and rules adopted pursuant to Title 37, chapter 1, and this chapter;

(4) establish a schedule of fees for certifying agencies and euthanasia technicians, ensuring that the fees are commensurate with the costs of the certification program;

(5) establish a list of controlled substances approved for the purpose of euthanasia;

(6) adopt other rules that the board or department considers necessary for the implementation of [sections 1 through 6]; and

(7) inspect any certified agency's controlled substance storage, inventory, administration procedures, and recordkeeping.

Section 4. Certified agency — duties. (1) A person may not possess controlled substances for the purpose of euthanasia without first becoming a licensed veterinarian or a certified agency under rules adopted by the board.

(2) Certified agencies shall apply for registration with the applicable state or federal agency to possess controlled substances approved by the board for purposes of euthanasia.

(3) Certified agencies shall comply with all state and federal laws regarding the storage, care, and administration of controlled substances. Failure to comply with these laws may result in the immediate revocation of the certification in addition to any other civil or criminal penalties provided under any other statute.

Section 5. Certified euthanasia technician. (1) A person may not administer controlled substances for euthanasia purposes unless the person is a licensed veterinarian, a certified euthanasia technician, or support personnel as defined by rules adopted by the board.

(2) A certified euthanasia technician may use controlled substances only for euthanasia purposes unless the certified euthanasia technician is under the direct supervision of a licensed veterinarian.

Section 6. Disposition of fees. Any fees collected under [sections 1 through 6] must be deposited in a state special revenue account to offset costs incurred by the board or department in carrying out [sections 1 through 6].

Section 7. Section 37-7-103, MCA, is amended to read:

“37-7-103. Exemptions. Subject only to 37-7-401 and 37-7-402, this chapter does not:

(1) subject a person who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person's practice, or prevent a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons ~~either~~ at *either* wholesale or retail for use for commercial purposes or in the arts; ~~or~~

(4) ~~changes~~ *change* any of the provisions of this code relating to the sale of insecticides and fungicides;

(5) ~~and does not~~ prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

~~(4)~~(6) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

~~(5)~~(7) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the ~~board of pharmacy's~~ *board's* requirements for labeling, storage, and recordkeeping of drugs; or

(8) *prevent a certified agency from possessing, or a certified euthanasia technician or support personnel under the supervision of the employing veterinarian from administering, any controlled substance authorized by the board of veterinary medicine for the purpose of euthanasia pursuant to [sections 1 through 6].”*

Section 8. Section 37-18-104, MCA, is amended to read:

“37-18-104. Exemptions — rules. (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university-Bozeman, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws of that state to practice veterinary medicine, who is actually called to attend cases in this state but who does not open an office or appoint a

place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;

(e) the employment of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association, if the students are employed by and work under the immediate supervision of a veterinarian licensed and registered under this chapter; or

(f) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) Nonsurgical embryo transfers in bovines may be performed under the supervision of a veterinarian licensed and residing in Montana. At a minimum, board rules regarding nonsurgical embryo transfers in bovines must address:

(a) minimum education requirements;

(b) minimum requirements of practical experience;

(c) continuing education requirements;

(d) limitations on practices and procedures that may be performed by certified individuals;

(e) the use of specific drugs necessary for safe and proper practice of certified procedures;

(f) content and administration of the certification test, including written and practical testing;

(g) application and reexamination procedures; and

(h) conduct of certified individuals, including rules for suspension, revocation, and denial of certification.

(4) This chapter does not prohibit a person from caring for and treating the person's own farm animals or being assisted in this treatment by the person's full-time employees, as defined in 2-18-601, employed in the conduct of the person's business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at the pharmacist's regular place of business.

(6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.

(7) This chapter does not prohibit an employee of a licensed veterinarian from rendering care for that veterinarian's animal patients in cases of emergency. Permissible emergency employee activities under this subsection include activities determined by board rule to be acceptable but do not include the performance of surgery or the rendering of diagnoses.

(8) *This chapter does not prohibit a certified agency from possessing, or a certified euthanasia technician from administering, any controlled substance*

authorized by the board for the purpose of euthanasia pursuant to [sections 1 through 6].”

Section 9. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 37, chapter 18, and the provisions of Title 37, chapter 18, apply to [sections 1 through 6].

Section 10. Effective date. [This act] is effective January 1, 2004.

Section 11. Termination. [This act] terminates January 1, 2008.

Approved March 5, 2003

CHAPTER NO. 61

[SB 164]

AN ACT REMOVING A CONFLICT BETWEEN STATUTES TO CLARIFY THAT A SHELTER CARE FACILITY MAY NOT HOLD A YOUTH IN A PHYSICALLY RESTRICTING MANNER; AMENDING SECTION 41-5-1801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-1801, MCA, is amended to read:

“41-5-1801. Shelter care facilities. (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

~~(2) A shelter care facility may be used to provide an appropriately physically restricting setting for youth alleged or adjudicated to be a delinquent youth or a youth in need of intervention.~~

~~(3)~~(2) A shelter care facility must be physically separated from any facility housing adults accused or convicted of criminal offenses.

~~(4)~~(3) State appropriations and federal funds may be received by counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

~~(5)~~(4) A shelter care facility must be furnished in a comfortable manner.

~~(6)~~(5) A shelter care facility may be operated in conjunction with a youth detention facility.

~~(7)~~(6) A shelter care facility may permit a school district to use the facility as an alternative education site provided that the school district provides the educational program and personnel necessary to instruct the youth. Public schools shall follow the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making education placement decisions for youth with disabilities.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 5, 2003

CHAPTER NO. 62

[SB 195]

AN ACT REQUIRING THE MONTANA HISTORICAL SOCIETY TO COMMISSION A SCULPTURE FOR LONG-TERM PLACEMENT IN THE SENATE CHAMBERS; REQUIRING THE LEWIS AND CLARK BICENTENNIAL COMMISSION TO SECURE OUTSIDE FUNDING FOR THE SCULPTURE; AND CREATING A SENATE ADVISORY GROUP TO ADVISE THE MONTANA HISTORICAL SOCIETY ON COMMISSIONING OF THE SCULPTURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Senate sculpture. (1) The Montana historical society, in consultation with the senate advisory group, provided for in subsection (4), and the Lewis and Clark bicentennial commission, provided for in 2-15-150, shall commission a qualified artist to create a bronze relief sculpture.

(2) The sculpture must reflect a theme consistent with the Lewis and Clark expedition and be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.

(3) The Lewis and Clark bicentennial commission shall secure outside funding for the commissioning of the sculpture.

(4) (a) The president of the senate, in consultation with the senate minority floor leader, shall appoint six former members of the senate, no more than three of whom represented the same political party when they served in the senate, to an advisory group to consult with the Montana historical society on the commissioning of the sculpture.

(b) Members of the advisory group shall serve without compensation or reimbursement for expenses.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 17, part 8, and the provisions of Title 2, chapter 17, part 8, apply to [section 1].

Section 3. Coordination instruction. If House Bill No. 114 and [this act] are both passed and approved, then [section 6] of House Bill No. 114 is amended to read:

“Section 6. Placement of certain busts, statues, memorials, monuments, and art displays. (1) The following busts, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, and the 1972 Montana constitutional convention;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

(d) the portraits of Joseph K. Toole and Wilbur Fiske Sanders;

(e) the statues of Wilbur Fiske Sanders, Jeanette Rankin, and Mike and Maureen Mansfield;

- (f) the Montana statehood centennial bell;
- (g) the gallery of outstanding Montanans;
- (h) the Montana constitutional exhibit; and
- (i) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors.

(2) The following busts, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

- (a) the statue of Thomas Francis Meagher;
- (b) the plaque commemorating Donald Nutter; and
- (c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project.

(3) The statue by Robert Scriver entitled "symbol of the pros" is to be placed for up to 50 years, subject to renewal, on the capitol complex grounds.

(4) *The senate sculpture provided for in [section 1 of Senate Bill No. 195] is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.*

~~(4)~~(5) The council shall determine the specific placement of the items identified in subsections (1) through (3)."

Approved March 5, 2003

CHAPTER NO. 63

[HB 128]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IX OF THE MONTANA CONSTITUTION TO CREATE A NOXIOUS WEED MANAGEMENT TRUST FUND; PROVIDING FOR THE PROTECTION OF THE TRUST IN THE AMOUNT OF \$10 MILLION UNLESS APPROPRIATED BY A VOTE OF THREE-FOURTHS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE; AND PROVIDING FOR THE APPROPRIATION OF INTEREST, INCOME, AND A PORTION OF THE PRINCIPAL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article IX of The Constitution of the State of Montana is amended by adding a new section 6 that reads:

Section 6. Noxious weed management trust fund. (1) The legislature shall provide for a fund, to be known as the noxious weed management trust of the state of Montana, to be funded as provided by law.

(2) The principal of the noxious weed management trust fund shall forever remain inviolate in an amount of ten million dollars (\$10,000,000) unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature.

(3) The interest and income generated from the noxious weed management trust fund may be appropriated by a majority vote of each house of the legislature. Appropriations of the interest and income shall be used only to fund the noxious weed management program, as provided by law.

(4) The principal of the noxious weed management trust fund in excess of ten million dollars (\$10,000,000) may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of ten million dollars (\$10,000,000) shall be used only to fund the noxious weed management program, as provided by law.

Section 2. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2004 by printing on the ballot the full title of this act and the following:

- FOR creating a noxious weed management trust fund and restricting its use.
- AGAINST creating a noxious weed management trust fund and restricting its use.

CHAPTER NO. 64

[HB 36]

AN ACT REVISING THE LAWS GOVERNING CREDIT UNIONS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO DETERMINE THE SCHEDULE FOR CREDIT UNION EXAMINATIONS; ELIMINATING THE MAKEUP REQUIREMENTS FOR REGULAR RESERVE ACCOUNTS AND GRANTING THE DEPARTMENT DISCRETION TO REQUIRE CREDIT UNIONS TO ESTABLISH A REGULAR RESERVE ACCOUNT; REPEALING THE DEFINITION OF RISK ASSETS; AMENDING SECTIONS 32-3-203 AND 32-3-702, MCA; AND REPEALING SECTION 32-3-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3-203, MCA, is amended to read:

“32-3-203. Examinations. (1) The department of administration shall ~~annually~~ examine or cause to be examined each credit union *on a schedule determined by the department*. Each credit union and all of its officers and agents must be required to give to representatives of the director of the department full access to all books, papers, securities, records, and other sources of information under their control. For the purpose of the examination, the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination must be forwarded to the executive officer of each credit union promptly after completion. The report must contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and committee members shall meet to consider matters contained in the report.

(3) In lieu of making an ~~annual~~ examination of a credit union, the director may accept an audit report of the condition of the credit union made by an auditor approved by the director. The cost of the audit must be borne by the credit union.”

Section 2. Section 32-3-702, MCA, is amended to read:

~~“32-3-702. Makeup Maintenance of regular reserve account.~~ ~~(1) The department of administration may require a credit union to establish and maintain, at a certain level, a regular reserve account as a contingency to address potential losses. The department may rely on standards adopted by the national credit union administration (NCUA) in making any determination to require a credit union to establish a regular reserve account. Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:~~

~~(a) 10% of gross income until the regular reserve equals 5% of the total of outstanding loans and risk assets; then~~

~~(b) 7% of gross income until the regular reserve equals 6% of the total of outstanding loans and risk assets; then~~

~~(c) 5% of gross income until the regular reserve equals 7% of the total of outstanding loans and risk assets.~~

~~(2) Whenever the regular reserve falls below 7%, 6%, or 5% of the total outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of 5%, 6%, or 7%.~~

~~(3) Any entrance fees, charges, and transfer fees shall, after payment of organization expense, be added to the regular reserve.”~~

Section 3. Repealer. Section 32-3-704, MCA, is repealed.

Approved March 17, 2003

CHAPTER NO. 65

[HB 45]

AN ACT REVISING LAWS CONCERNING ESCROW BUSINESSES; REQUIRING APPLICANTS FOR AN ESCROW BUSINESS LICENSE TO POST A BOND IN AN AMOUNT TO BE SET BY THE DEPARTMENT OF ADMINISTRATION BY RULE; ESTABLISHING THE AMOUNT OF THE INITIAL LICENSE FEE AS \$350 AND THE AMOUNT OF THE ANNUAL LICENSE RENEWAL FEE AS \$100; PROVIDING THAT FUNDS AVAILABLE FOR WITHDRAWAL FROM AN ESCROW ACCOUNT AS A MATTER OF RIGHT MUST BE DISBURSED WITHIN 5 BUSINESS DAYS; AND AMENDING SECTIONS 32-7-109, 32-7-110, AND 32-7-117, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-7-109, MCA, is amended to read:

“32-7-109. Application for license — bond — issuance. (1) A person must be licensed pursuant to this part before engaging in an escrow business.

(2) To obtain a license, an applicant shall file with the director an application for an escrow business license. The application must be in writing, verified by oath, and in the form prescribed by the director. The application must set forth:

(a) the location of the applicant’s principal office and all branch offices in this state;

(b) the name and form under which the applicant plans to conduct business;

- (c) the general plan and character of the business;
- (d) the names, residences, and business addresses of any principals, partners, officers, trustees, and directors, specifying as to each ~~his~~ *the respective* capacity and title;
- (e) the experience and qualifications of the persons proposed to act as officers and managers;
- (f) the length of time the applicant has been engaged in the escrow business; and
- (g) any other relevant information the director requires.

(3) An applicant shall file with the license application a bond in an amount to be set by the department by rule. The bond must be conditioned on the applicant conducting the escrow business in accordance with the requirements of law. All bonds must be filed with the department, approved by the department, and renewed annually.

~~(3)~~(4) The director shall grant and issue an escrow business license if:

- (a) the director has received *the bond and application* ~~and filed the application~~ specified in this section; and
- (b) the applicant has complied with all the requirements of this part and any rules promulgated under it.

~~(4)~~(5) An escrow business shall immediately notify the department of any material change in the information contained in the application.”

Section 2. Section 32-7-110, MCA, is amended to read:

“32-7-110. Fees. (1) (a) An applicant for licensure shall pay ~~a~~ *an initial* license fee ~~set by the director, commensurate with the costs of licensing the applicant of \$350.~~

(b) Licenses expire annually on June 30. A licensee shall, on or before June 1, pay an annual license renewal fee of \$100. A licensee's failure to pay the annual license renewal fee within the time prescribed results in an automatic revocation of the license.

~~(b)~~(c) A licensee may be charged an examination fee based on the actual costs of the examination.

(2) All fees collected by the department for the licensure and examination of escrow businesses must be paid to the state treasurer to the credit of the state special revenue fund for use by the department in its licensure and examination functions under this part.”

Section 3. Section 32-7-117, MCA, is amended to read:

“32-7-117. Deposit of funds required — disbursement. (1) All money deposited in an escrow to be delivered upon the close of the escrow or upon any other contingency must be deposited with a financial institution, as defined in 32-6-103, doing business in this state and must be kept separate, distinct, and apart from funds belonging to the escrow business. The funds, when deposited, must be designated as “escrow accounts” or given some other appropriate designation indicating that the funds are not the funds of the escrow business.

(2) A person may not knowingly keep or cause to be kept any funds or money with a financial institution, as defined in 32-6-103, under the heading of “escrow accounts” or any other name designating the funds or money as belonging to the

clients of any escrow business, except actual escrow funds deposited with the escrow business.

(3) Escrow funds are not subject to execution or attachment on any claim against the escrow business.

(4) Any interest received on funds deposited with an escrow business in connection with any escrow that is deposited in an authorized depository must be paid over to the depositing party to the escrow account and may not be transferred to an account of the escrow business. This section does not limit or restrain the right of the depositing party to contract with respect to the interest received on the deposits by an independent agreement.

(5) An escrow business may not disburse funds from any escrow account until cash, items, or drafts in an amount sufficient to fund any disbursements from the account have been received and deposited in the account and are available for withdrawal from the account as a matter of right. *If sufficient funds are available for withdrawal from the account as a matter of right, required disbursements must be made within 5 business days of the receipt of sufficient funds.* For the purposes of this subsection (5), the following definitions apply:

(a) "Available for withdrawal from the account as a matter of right" means that the bank or savings and loan association in which an item has been deposited considers the item available for withdrawal as a matter of right and that a final settlement will occur in writing with respect to that item.

(b) "Item" means any check, including a cashier's check, negotiable order of withdrawal, share draft, traveler's check, or money order."

Approved March 17, 2003

CHAPTER NO. 66

[HB 59]

AN ACT PERMITTING REVISIONS OF INCOME TAX RETURNS FOR THE ELDERLY RESIDENTIAL PROPERTY TAX CREDIT TO BE MADE WITHIN 5 YEARS FOLLOWING THE DUE DATE FOR A CLAIM FOR THE CREDIT; DELETING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE MAINTAIN RECORDS OF REQUESTS FOR EXTENSIONS; AMENDING SECTION 15-30-174, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-174, MCA, is amended to read:

"15-30-174. Residential property tax credit for elderly — filing date.

(1) Except as provided in subsection (2), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists. ~~The department shall keep a record of each extension and the reason for granting the extension.~~

(3) In the event that an individual who would have a claim under 15-30-171 through 15-30-179 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

(4) *The department or an individual may revise a return and make a claim under 15-30-171 through 15-30-179 within 5 years from the last day prescribed for filing a claim for relief.*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 14, 2003

CHAPTER NO. 67

[HB 65]

AN ACT GENERALLY REVISING DENTISTRY AND DENTAL HYGIENE LAWS; EXCLUDING STUDENTS OF AN ACCREDITED DENTAL HYGIENE PROGRAM FROM LICENSING REQUIREMENTS WHILE PERFORMING SUPERVISED FREE DENTAL HYGIENE SERVICES; EXCLUDING STUDENTS OF AN ACCREDITED PROGRAM WHO ARE SEEKING A D.D.S. OR D.M.D. DEGREE FROM LICENSING REQUIREMENTS IF THEY ARE PRACTICING DENTISTRY WHILE SUPERVISED AND WITHOUT CHARGE; EXCLUDING DENTAL RESIDENTS IN ADVANCED EDUCATION PROGRAMS FROM LICENSING REQUIREMENTS WHILE PERFORMING FREE CLINICAL SERVICES WITHIN THE ADVANCED EDUCATION PROGRAM; ALLOWING CERTAIN NONPRACTICING AND RETIRED DENTISTS AND DENTAL HYGIENISTS TO PROVIDE SERVICES FOR INDIGENT AND UNINSURED PERSONS IN UNDERSERVED OR CRITICAL NEED AREAS AND WAIVING THEIR RENEWAL AND LATE FEES; PROVIDING RULEMAKING AUTHORITY PERTAINING TO VOLUNTEER DENTISTS AND DENTAL HYGIENISTS; AMENDING SECTION 37-4-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-4-103, MCA, is amended to read:

“37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) This chapter does not prevent a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to the faculty member's teaching functions. This chapter does not prevent students from performing dental

procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board if the dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of dentistry under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in this chapter apply to a person engaged in the lawful practice of dentistry.

(5) This chapter does not require the licensure of or prohibit the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist from contracting with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided if the personal representative in either case complies with the provisions of 37-4-104.

(6) Section 37-4-101(2)(b) does not prevent a licensee from entering into a contract with or being employed by the following clinics:

(a) university clinics for the purpose of providing dental care to registered students;

(b) correctional facilities for the purpose of providing dental care to inmates; and

(c) federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b.

(7) A clinic that employs or otherwise contracts with a dentist under subsection (6) may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care; or

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.

(8) *This chapter does not require licensure of the following individuals while engaged in the practice of dentistry, as provided in 37-4-101:*

(a) students of an accredited commission on dental accreditation (CODA) dental hygiene program or school who are candidates for a dental hygiene degree and who practice dental hygiene without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a demonstrator or teacher who is a faculty member of an accredited CODA dental hygiene program or school;

(b) students of an accredited CODA program or school who are candidates for a D.D.S. or D.M.D. degree and who practice dentistry without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a demonstrator or teacher who is a faculty member of a CODA dental program or school; or

(c) dental residents who have received a D.D.S. or D.M.D. degree from a CODA accredited school and who are engaged in advanced education in dentistry at a dental school, hospital, or public health facility that offers the type of advanced program designed to meet accreditation requirements established by CODA. A dental resident may perform all clinical services within the

advanced education program in which the dental resident is enrolled if the services are provided by the sponsoring institution and are authorized by the program supervisor. A dental resident who is not licensed in Montana may not engage in private practice or assess fees for clinical services rendered.”

Section 2. Volunteer work — licensure — fee waiver — rules. (1) A retired or nonpracticing dentist or dental hygienist may apply for a license to practice dentistry or dental hygiene for the purpose of providing services to indigent or uninsured patients in underserved or critical need areas. An applicant for licensure under this subsection (1) may be required by the board to establish that the applicant is competent to practice before the board grants the applicant a license.

(2) It is not within the scope of a license issued to a dentist or dental hygienist under this section to provide services for remuneration.

(3) If a person is eligible for licensure under the provisions of subsection (1) and the person applies for a license prior to July 1, 2004, the person's renewal fees and late fees accrued since the person's license lapsed are waived. The board may adopt rules providing that renewal fees and late fees or a portion of those fees may be waived for eligible persons applying for licensure under this section after July 1, 2004.

(4) The board may adopt rules setting forth licensing requirements, fees, and other rules necessary to implement any other provisions of this section.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 37, chapter 4, and the provisions of Title 37, chapter 4, apply to [section 2].

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Effective date. [This act] is effective July 1, 2003.

Approved March 17, 2003

CHAPTER NO. 68

[HB 106]

AN ACT GENERALLY REVISING LAWS DEALING WITH THE DEPARTMENT OF REVENUE'S RELATIONSHIP TO PROBATE ADMINISTRATION; AMENDING SECTIONS 72-3-607, 72-3-609, 72-3-1006, 72-4-303, 72-4-305, AND 72-16-906, MCA; REPEALING SECTION 72-16-920, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-3-607, MCA, is amended to read:

“72-3-607. Inventory — appraisal — ~~copy to department of revenue.~~

(1) ~~If the estate must file a United States estate tax return, within the time~~

required for the filing of the United States estate tax return plus any extensions granted by the internal revenue service, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory. The inventory must include a listing of all property that:

~~(a) the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of the decedent's death;~~

~~(b) the decedent had possessory or dispository rights over at the time of death or had disposed of for less than its fair market value within 3 years of the decedent's death; or~~

~~(c) was affected by the decedent's death for the purpose of estate taxes. Within 9 months after appointment, a personal representative who is not a special administrator or a successor to another representative who has previously discharged this duty shall prepare an inventory of property owned by the decedent at the time of the decedent's death, listing the inventory of property with reasonable detail and indicating for each listed item its fair market value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to the item.~~

(2) The inventory must include a statement of the full and true value of the decedent's interest in every item listed in the inventory. ~~In this connection, the~~ The personal representative ~~shall~~ may appoint one or more qualified and disinterested persons to assist the personal representative in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any ~~appraiser~~ appraisers must be indicated on the inventory with the item or items appraised.

(3) The personal representative shall:

(a) send a copy of the inventory to interested persons; or

(b) ~~file the original of the inventory with the court and send a copy of the inventory to interested persons who request it, or the personal representative may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value must be mailed to the department of revenue.~~

Section 2. Section 72-3-609, MCA, is amended to read:

"72-3-609. Supplementary Supplemental inventory — copy to department of revenue. If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, ~~he~~ the personal representative shall make a ~~supplementary~~ supplemental inventory or ~~appraisal~~ appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions and the appraisers or other data relied upon, if any; ~~and~~ The personal representative shall file ~~it~~ the supplemental inventory with the court if the original inventory was filed or shall furnish copies ~~thereof~~ of the supplemental inventory or information ~~thereof~~ to persons interested in the new information and in any case shall mail a copy of it to the department of revenue."

Section 3. Section 72-3-1006, MCA, is amended to read:

"72-3-1006. Certificate or receipt showing taxes paid required to close estate. (1) In all probate proceedings under this code ~~requiring the filing~~

of a United States estate tax return, before a final distribution to successors is may not be made and before any petition is petitions may not be granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, unless there must have been has been filed with the clerk:

(a) a certificate from the department of revenue stating that any estate tax due on the assets of the estate has been paid or that no tax is payable; or

(b) an agreement with the department of revenue for extension of time for payment of estate taxes; or

~~(c) a receipt from the county treasurer stating that any estate tax due on the assets of the estate has been paid.~~

(2) This section does not prohibit a partial distribution that may become necessary in the course of administration."

Section 4. Section 72-4-303, MCA, is amended to read:

"72-4-303. Filing of letters, bond, inventory, and affidavit —copy to department of revenue. (1) The domiciliary foreign personal representative of the estate of a nonresident decedent, who wishes to receive payment and delivery as described in 72-4-306 or to exercise the powers over assets described in 72-4-310, shall file in duplicate with a district court in this state in a county in which property belonging to the decedent is located:

(a) authenticated copies of his the personal representative's appointment and of any official bond he has given;;

(b) an inventory and appraisal of the property of the nonresident decedent located in this state, which inventory shall must contain the information prescribed in 72-3-607; and

(c) an affidavit stating:

~~(a)~~(i) the date of death of the nonresident decedent; and and

~~(b)~~(ii) that no local administration or application or petition therefor for local administration is pending in this state.

(2) Upon receiving the information required by subsection (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying him the representative as having registered with the district court and stating the name and date of death of the decedent.

~~(3) The clerk shall also immediately forward a copy of the appointment, affidavit, and inventory and appraisal required by subsection (1) to the department of revenue."~~

Section 5. Section 72-4-305, MCA, is amended to read:

"72-4-305. Right to inspect estate assets for inventory. Any A person holding any property of a nonresident decedent, including any instrument evidencing a debt, obligation, stock, or chose in action, shall permit the domiciliary foreign personal representative of the nonresident decedent to inspect and appraise and appraise the property for purposes of completing the inventory and appraisal called for in 72-4-303(1) upon being presented with proof of his the representative's appointment and an affidavit made by or on behalf of the representative stating:

(1) the date of death of the nonresident decedent;

(2) that no local administration or application or petition therefor for local administration is pending in this state; and

(3) that the domiciliary foreign personal representative is entitled to make ~~such~~ the inspection and appraisal.”

Section 6. Section 72-16-906, MCA, is amended to read:

“72-16-906. Required filings filing of United States estate tax return. The personal representative *or domiciliary foreign personal representative* of the estate of any decedent whose estate is ~~subject to the payment of~~ *required to file* a United States estate tax *return* shall file a duplicate of the United States estate tax return with the department of revenue. ~~He shall also file with the department a certificate or other evidence from the internal revenue service showing the amount of the United States estate tax as computed by the internal revenue service.~~”

Section 7. Repealer. Section 72-16-920, MCA, is repealed.

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to deaths occurring after December 31, 2000, for which the probate of the decedents' estates closes after [the effective date of this act].

Approved March 14, 2003

CHAPTER NO. 69

[HB 149]

AN ACT REVISING THE CRIMINAL SENTENCE REVIEW PROCESS; ALLOWING THE REVIEW DIVISION OF THE SUPREME COURT TO MEET IN VARIOUS LOCATIONS; ALLOWING THE CHIEF JUSTICE OF THE SUPREME COURT TO DESIGNATE A REPLACEMENT FOR A MEMBER OF THE REVIEW DIVISION THAT IS UNABLE TO SERVE; ALLOWING A PERSON SENTENCED TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO APPLY FOR SENTENCE REVIEW; REQUIRING CERTAIN NOTICES TO BE GIVEN TO A DEFENDANT'S COUNSEL; CLARIFYING LANGUAGE; REQUIRING THE DECISION OF THE REVIEW DIVISION TO BE SENT TO THE COUNTY ATTORNEY AND DEFENSE COUNSEL; AMENDING SECTIONS 46-18-901, 46-18-902, 46-18-903, 46-18-904, AND 46-18-905, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-901, MCA, is amended to read:

“46-18-901. Review division of the supreme court for — review of sentences. (1) The chief justice of the supreme court of Montana shall appoint three district court judges to act as a review division of the supreme court and shall designate one of ~~such~~ the judges to act as ~~chairman thereof~~ *presiding officer of the review division*. The clerk of the Montana supreme court shall record ~~such~~ the appointment and shall give notice ~~thereof~~ *of the appointment* to the clerk of every district court.

(2) ~~This~~ *The* review division shall meet at least four times a year ~~or more~~ as its business requires, as determined by the ~~chairman~~ *presiding officer*. The review division shall hold its meetings at ~~Deer Lodge~~ *locations as determined by the review division*.

(3) The decision of ~~any~~ two of ~~such~~ the judges ~~shall be~~ is sufficient to determine any matter before the review division.

(4) The review division may adopt any rules ~~which~~ that will expedite its review of sentences. The division is also authorized to appoint a secretary ~~and such clerical help as it deems adequate and fix their compensation.~~

Section 2. Section 46-18-902, MCA, is amended to read:

“46-18-902. Interested judge not to act. ~~No~~ A judge ~~shall~~ may not sit or act on a review of a sentence ~~that was imposed by him~~ the judge. In any case in which review of a sentence imposed by any of the judges serving on the review division is to be acted on by ~~said~~ the division or if any member is unavailable to serve, the chief justice of the supreme court of Montana may designate another judge to act in place of ~~such~~ the judge.”

Section 3. Section 46-18-903, MCA, is amended to read:

“46-18-903. Application for review. (1) ~~Any~~ A person sentenced to a term of 1 year or more in the state prison or to the custody of the department of corrections by ~~any~~ a court of competent jurisdiction may within 60 days from the date ~~such~~ the sentence was imposed, except in ~~any~~ a case in which a different sentence could not have been imposed, file with the clerk of the district court in the county in which judgment was rendered an application for review of the sentence by the review division. Upon imposition of the sentence, the clerk shall give written notice to the person sentenced ~~and to the person's counsel of his~~ the right to make ~~such~~ a request. ~~Such~~ The notice ~~shall~~ must include a statement that review of the sentence may result in a decrease or increase of the sentence within limits fixed by law.

(2) The clerk shall transmit ~~such~~ the application to the review division and shall notify the judge who imposed the sentence ~~and~~, the county attorney of the county in which the sentence was imposed, ~~and the person's counsel of record.~~ ~~Such~~ The judge may transmit to the review division a statement of ~~his~~ the judge's reasons for imposing the sentence and shall transmit ~~such~~ a the statement within 7 days if requested to do so by the review division.

(3) The review division may for cause shown consider any late request for review of sentence and may grant ~~such~~ or deny the request.

(4) The filing of an application for review ~~shall~~ may not stay the execution of the sentence.”

Section 4. Section 46-18-904, MCA, is amended to read:

“46-18-904. Procedure upon review. (1) In each case in which an application for review is filed in accordance with 46-18-903, the review division:

(a) (i) shall review the judgment ~~so far~~ as it relates to the sentence imposed, ~~either increasing or decreasing the penalty,~~ and any other sentence imposed on the person at the same time; and

(ii) may order ~~such~~ a different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review, *including a decrease or increase in the penalty;* or

(b) may decide that the sentence under review should stand.

(2) In reviewing ~~any~~ a judgment, ~~said~~ the division may require the production of presentence reports and any other records, documents, or exhibits relevant to ~~such~~ the review proceedings. The ~~appellant~~ person requesting the review may appear and *has the right* to be represented by counsel, and the state

may be represented by the county attorney of the county in which the sentence was imposed. Any other interested person, including the sentencing judge, may attend and participate in the review proceedings.

(3) The sentence imposed by the district court is presumed correct. If the review division orders a different sentence, the court sitting in any convenient county shall resentence the ~~defendant~~ *person* as ordered by the review division. Time served on the sentence reviewed ~~shall be deemed~~ *is considered* to have been served on the sentence substituted.”

Section 5. Section 46-18-905, MCA, is amended to read:

“46-18-905. Decision — finality, report of. (1) The decision of the review division in each case ~~shall be~~ *is* final, and the reasons for ~~such the decision shall~~ *must* be stated ~~therein in the decision.~~ The original of each decision ~~shall must~~ be sent to the clerk of the court for the county in which the judgment was rendered, and a copy ~~shall must~~ be sent to the judge who imposed the sentence reviewed, the person sentenced, *the defense counsel, the county attorney,* and the principal officer of the institution in which ~~he~~ *the person* is confined.

(2) The decision ~~shall must~~ be reported in the Montana Reports.”

Section 6. Effective date. [This act] is effective July 1, 2003.

Approved March 17, 2003

CHAPTER NO. 70

[HB 353]

AN ACT NAMING THE CITY OF LAUREL, MONTANA, AS THE OFFICIAL SITE OF THE MONTANA STATE FIREFIGHTERS' MEMORIAL.

WHEREAS, firefighters in the State of Montana have put themselves in dangerous situations to protect lives and property; and

WHEREAS, some firefighters have paid the ultimate sacrifice in the line of duty; and

WHEREAS, the Legislature wants to honor those who have died in the line of duty and recognize those deceased firefighters in the State of Montana who dedicated 20 or more years of their lives in service as firefighters; and

WHEREAS, the Laurel Volunteer Fire Company initiated the planning and logistics for construction of a Montana State Firefighters' Memorial; and

WHEREAS, the City of Laurel has adopted City Resolution R01-24 that dedicates the property at the corner of West First Street and Second Avenue East of the Fire, Ambulance, and Police Building in the City of Laurel and has renamed the property “Firefighters' Memorial Park”; and

WHEREAS, the Laurel Volunteer Fire Company has received unanimous backing from the Montana State Volunteer Firefighters Association and the Montana Fire Alliance for the construction of the firefighters' memorial in the City of Laurel; and

WHEREAS, Governor Judy Martz has presented a Governor's Citation to the Laurel Volunteer Fire Company, dedicating the park as the future home of the Montana State Firefighters' Memorial.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana state firefighters' memorial. (1) The site chosen by the city of Laurel, Montana, as "firefighters' memorial park" is officially designated as the location of the Montana state firefighters' memorial.

(2) The department of commerce and the department of transportation shall identify the memorial in Laurel on official state maps and, where appropriate, on state highway signs as the official state firefighters' memorial.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Approved March 17, 2003

CHAPTER NO. 71

[HB 364]

AN ACT CLARIFYING THAT THE CONSTITUTIONAL PROVISION RESTRICTING THE EXPENDITURE OF REVENUE FROM SPECIAL LEVIES ON AGRICULTURAL COMMODITIES APPLIES TO ALL FEES ASSESSED BY THE DEPARTMENT OF AGRICULTURE FOR LICENSES, REGISTRATIONS, INSPECTIONS, AND OTHER PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Restriction on use of revenue to include department fees. The restriction in Article XII, section 1(2), of the Montana constitution, which provides that revenue derived from special levies made on agricultural commodities must be used solely for the purposes of the levies, applies to all fees assessed by the department for licenses, registrations, inspections, and other purposes pursuant to this title. Levy purposes may include department administrative expenses.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 1, part 1, and the provisions of Title 80, chapter 1, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 17, 2003

CHAPTER NO. 72

[SB 41]

AN ACT CHANGING THE DESIGNATION OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND FROM AN INDEPENDENT INSTITUTION TO A STATE-SUPPORTED SPECIAL SCHOOL; AMENDING SECTION 20-8-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-8-101, MCA, is amended to read:

"20-8-101. Montana school for deaf and blind — independent institution state-supported special school. The school for the deaf and blind, formerly located at Boulder in connection with the Montana state

~~training school but transferred before July 1, 1943, to the city of Great Falls, shall be~~ is known and designated as the Montana school for the deaf and blind and ~~shall~~ must be conducted as a separate and independent unit and ~~institution~~ special school of the state of Montana under the general supervision, direction, and control of the board of public education. However, the transfer of that school or any change in the name ~~thereof of the school~~ or in the objects or purposes ~~thereof of the school~~ may not be considered or construed to impair or work any forfeiture or alteration of any rights, grants, or property made to or acquired by that school or by the state for the use and benefit of that school ~~prior to July 1, 1943.~~

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 17, 2003

CHAPTER NO. 73

[SB 42]

AN ACT REQUIRING THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO ESTABLISH A SYSTEM FOR TRACKING HEARING IMPAIRED OR VISUALLY IMPAIRED CHILDREN; AND AMENDING SECTION 20-8-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-8-102, MCA, is amended to read:

"20-8-102. Objects and purposes — assistance to programs — tracking sensory impaired children — fee. (1) The Montana school for the deaf and blind is a residential and day school for children and adolescents who are deaf or blind or whose hearing or sight is so defective that they cannot be successfully taught and are unable to receive a sufficient or proper education in the public schools of the state.

(2) The school shall serve as a consultative resource for parents of hearing impaired and visually impaired children not yet enrolled in an educational program and for public schools of the state where hearing impaired or visually impaired children are enrolled. The school upon request shall ensure that services and programs for hearing impaired or visually impaired children are appropriate and sufficient. The school may provide assistance to the programs that the school determines is needed. The school shall collect a reasonable fee for the assistance from the public school or other responsible agency receiving the assistance. The fee must be in an amount sufficient to cover the cost of services provided.

(3) *The school shall establish a system for tracking a child identified as hearing impaired or visually impaired from the time of impairment identification through the child's exit from intervention or educational services.*

~~(3)~~(4) The object and purpose of the school ~~is~~ are to furnish and provide, by the use of specialized methods and systems, an education for the hearing impaired and visually impaired children of this state that is commensurate with the education provided to nonhandicapped children in the public schools and that will enable children being served by the school to become independent and self-sustaining citizens."

Approved March 17, 2003

CHAPTER NO. 74

[SB 43]

AN ACT CHANGING THE FEE FOR SERVICES COLLECTED BY THE MONTANA SCHOOL FOR THE DEAF AND BLIND FROM A MANDATORY FEE TO AN OPTIONAL FEE; AND AMENDING SECTION 20-8-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-8-102, MCA, is amended to read:

“20-8-102. Objects and purposes — assistance to programs — fee. (1) The Montana school for the deaf and blind is a residential and day school for children and adolescents who are deaf or blind or whose hearing or sight is so defective that they cannot be successfully taught and are unable to receive a sufficient or proper education in the public schools of the state.

(2) The school shall serve as a consultative resource for parents of hearing impaired and visually impaired children not yet enrolled in an educational program and for public schools of the state where hearing impaired or visually impaired children are enrolled. The school upon request shall ensure that services and programs for hearing impaired or visually impaired children are appropriate and sufficient. The school may provide assistance to the programs that the school determines is needed. The school ~~shall~~ may collect a reasonable fee for the assistance from the public school or other responsible agency receiving the assistance. ~~The fee must be in an amount sufficient to cover the cost of services provided.~~

(3) The object and purpose of the school ~~is~~ are to furnish and provide, by the use of specialized methods and systems, an education for the hearing impaired and visually impaired children of this state that is commensurate with the education provided to nonhandicapped children in the public schools and that will enable children being served by the school to become independent and self-sustaining citizens.”

Approved March 17, 2003

CHAPTER NO. 75

[HB 194]

AN ACT GENERALLY REVISING PROVISIONS RELATED TO THE FORMS AND INFORMATION THAT MUST BE FILED WITH THE SECRETARY OF STATE BY A BUSINESS, CORPORATION, PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, OR LIMITED LIABILITY COMPANY; PROVIDING RULEMAKING AUTHORITY TO REQUIRE USE OF STANDARDIZED FORMS; SPECIFYING THE REINSTATEMENT APPLICATION PROCESS FOR LIMITED PARTNERSHIPS; ELIMINATING THE REQUIREMENT FOR A COPY TO BE FILED WITH THE ORIGINAL FOR CERTAIN FILINGS; ELIMINATING THE REQUIREMENT THAT THE SECRETARY OF STATE PROVIDE A SECOND RENEWAL NOTIFICATION TO LIMITED LIABILITY PARTNERSHIPS; CLARIFYING THAT THE COMPLETE STREET ADDRESS MUST BE PROVIDED WITH CERTAIN FILINGS; ELIMINATING THE REQUIREMENT TO PROVIDE THE NAME OF THE CURRENT REGISTERED AGENT WHEN FILING A CHANGE OF OFFICE OR AGENT; REVISING WHO SHALL SIGN A RESOLUTION

CERTIFYING A CORPORATE NAME; PROVIDING THAT THE SECRETARY OF STATE DELIVER A CONFIRMATION LETTER RATHER THAN THE DOCUMENT COPY WHEN A DOCUMENT HAS BEEN RECEIVED; REQUIRING THAT A FILING FOR REINSTATEMENT INCLUDE COPIES OF ALL ANNUAL REPORTS NOT PREVIOUSLY FILED; AND AMENDING SECTIONS 30-13-206, 30-13-207, 35-1-216, 35-1-217, 35-1-314, 35-1-1031, 35-1-1308, 35-1-1309, 35-2-310, 35-6-201, 35-8-105, 35-8-202, 35-8-210, 35-8-912, 35-12-601, 35-12-606, 35-12-611, 35-12-612, 35-12-1302, AND 35-12-1303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Rulemaking authority and use of forms prescribed by secretary of state. The secretary of state may prescribe by rule a standard form for materials required to be filed with the secretary of state pursuant to Title 35. If the secretary of state prescribes a standard form pursuant to this section, the entity filing the form shall use the prescribed form.

Section 2. Reinstatement following cancellation for failure to renew. (1) If a certificate of limited partnership was canceled under 35-12-610 for failure to renew, an application for reinstatement of the original certificate may be made to the secretary of state within 5 years after the effective date of the cancellation.

(2) The application must:

(a) state the name of the limited partnership and the date its certificate of limited partnership was canceled;

(b) state that the limited partnership's name satisfies the requirements of 35-12-505; and

(c) include the information required in 35-12-601.

(3) If the secretary of state determines that the information provided is sufficient and correct, the secretary of state shall reinstate the certificate of limited partnership and send confirmation to the limited partnership.

(4) When reinstated under this section, the certificate of limited partnership becomes effective as if it had not been canceled.

Section 3. Section 30-13-206, MCA, is amended to read:

"30-13-206. Term and renewal of assumed business name registration. (1) Registration of an assumed business name is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state or by electronic means established by rule by the board of review established in 30-16-302, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of registration of an assumed business name, the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice to the last-known address of the applicant.

(3) (a) Subject to subsection (3)(b), if the applicant or person in whose name an assumed business name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration.

(b) If a limited liability partnership fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of

~~the registration, the secretary of state shall again notify the limited liability partnership of the pending expiration and give the limited liability partnership an additional 90 days within which to renew its registration. If the limited liability partnership fails to renew its registration within the second 90 day period, the secretary of state shall cancel the registration and the partnership is no longer a limited liability partnership."~~

Section 4. Section 30-13-207, MCA, is amended to read:

"30-13-207. Application for renewal of assumed business name. ~~One original and one copy of an~~ An application for renewal of registration of an assumed business name must be executed and delivered to the secretary of state. The application must include but is not limited to the following information:

- (1) the complete assumed business name;
- (2) the name and address, including street name and number, if any, of the applicant; and
- (3) a description of business transacted."

Section 5. Section 35-1-216, MCA, is amended to read:

"35-1-216. Articles of incorporation. (1) The articles of incorporation must set forth:

- (a) a corporate name for the corporation that satisfies the requirements of 35-1-308;
- (b) the number of shares the corporation is authorized to issue;
- (c) (i) the *complete business* street address of the corporation's initial registered office and, if different, the mailing address; and
 - (ii) the name of its initial registered agent at that office; and
 - (d) the name and address of each incorporator.
- (2) The articles of incorporation may set forth:
 - (a) the names and *complete street* addresses of the individuals who are to serve as the initial directors;
 - (b) provisions consistent with law regarding:
 - (i) the purpose or purposes for which the corporation is organized;
 - (ii) managing the business and regulating the affairs of the corporation;
 - (iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;
 - (iv) a par value for authorized shares or classes of shares; and
 - (v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;
 - (c) any provision that under this chapter is required or permitted to be set forth in the bylaws; and
 - (d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any actions taken or any failure to take any action, as a director, except liability for:
 - (i) the amount of a financial benefit received by a director to which the director is not entitled;

- (ii) an intentional infliction of harm on the corporation or the shareholders;
- (iii) a violation of 35-1-713; or
- (iv) an intentional violation of criminal law.

(3) The articles of incorporation are not required to set forth any of the corporate powers enumerated in this chapter.”

Section 6. Section 35-1-217, MCA, is amended to read:

“35-1-217. Filing requirements. All of the following requirements must be met before a document is entitled to be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. A corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(a) by the ~~chairman~~ *presiding officer* of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, and an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for the document under ~~35-1-1308~~ *rules adopted pursuant to [section 1]*.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) ~~one copy, except as provided in 35-1-315 and 35-1-1036;~~

~~(b)~~ the correct filing fee; and

~~(c)~~ (b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law.”

Section 7. Section 35-1-314, MCA, is amended to read:

“35-1-314. Change of registered office or registered agent. (1) A corporation may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the corporation;

(b) the street address of its current registered office and, if different, the mailing address;

(c) if the current registered office is to be changed, the street address of the new registered office and, if different, the mailing address;

(d) ~~the name of its current registered agent;~~

(e) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

~~(f)~~(e) that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, that agent may change the street address of the registered office of any corporation for which it is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement that complies with the requirements of subsection (1) and recites that the corporation has been notified of the change."

Section 8. Section 35-1-1031, MCA, is amended to read:

"35-1-1031. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-1-308, to obtain or maintain a certificate of authority to transact business in this state, the foreign corporation shall:

(a) add the word "corporation", "incorporated", "company", or "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." to its corporate name for use in this state; or

(b) use a fictitious name to transact business in this state if its real name is unavailable and deliver to the secretary of state, for filing, a copy of the resolution of its board of directors, ~~certified by its secretary~~ *signed by an officer of the board or the corporate presiding officer*, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name of a foreign corporation, including a fictitious name, must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name of another foreign corporation authorized to transact business in this state;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the

secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name of another domestic or foreign corporation, including the fictitious name, that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-1-308, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-1-308 and obtains an amended certificate of authority under 35-1-1029."

Section 9. Section 35-1-1308, MCA, is amended to read:

"35-1-1308. Forms. (1) The secretary of state may by rule prescribe and furnish on request forms or computer formats, *including standard forms*, for:

(a) an application for a certificate of existence;

(b) a foreign corporation's application for a certificate of authority to transact business in this state;

(c) a foreign corporation's application for a certificate of withdrawal;

(d) the annual report; and

(e) other documents required or permitted to be filed by this chapter.

(2) If the secretary of state ~~so~~ requires, use of any of the forms or formats listed in subsection (1) is mandatory."

Section 10. Section 35-1-1309, MCA, is amended to read:

"35-1-1309. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing "Filed", together with the secretary of state's name, official title, and the date and time of receipt, on the original, the document copy, and the receipt for the filing fee. Except as provided in 35-1-315 and 35-1-1034, after filing a document, the secretary of state shall deliver ~~the document copy~~ a *confirmation letter* to the domestic or foreign corporation or its representative, along with the filing fee receipt or acknowledgment of receipt if no fee is required.

(3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within

10 days after the document was delivered, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

- (a) affect the validity or invalidity of the document in whole or part;
- (b) relate to the correctness or incorrectness of information contained in the document; or
- (c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

Section 11. Section 35-2-310, MCA, is amended to read:

"35-2-310. Change of registered office or registered agent. (1) A corporation may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

- (a) the name of the corporation;
- (b) the street address of its current registered office and, if different, the mailing address;
- (c) if the current registered office is to be changed, the street address of the new registered office, and, if different, the mailing address;
- (d) ~~the name of its current registered agent;~~
- (~~e~~) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and
- (~~f~~)^(e) that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(2) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement that complies with the requirements of subsection (1) and that states that the corporation has been notified of the change."

Section 12. Section 35-6-201, MCA, is amended to read:

"35-6-201. Reinstatement of dissolved corporation — fee. (1) The secretary of state may:

- (a) reinstate any corporation that has been dissolved under the provisions of this chapter; and
 - (b) restore to the corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.
- (2) A corporation applying for reinstatement shall submit to the secretary of state ~~one original and one copy~~ of the application, executed by a person who was an officer or director at the time of dissolution, setting forth:
- (a) the name of the corporation;
 - (b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-938 through 35-1-943 or 35-2-726 and 35-2-727;
 - (c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; ~~and~~

(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405; *and*

(c) *all annual reports not yet filed with the secretary of state.*

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, the secretary of state shall:

(a) conform and file in the secretary of state's office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 13. Section 35-8-105, MCA, is amended to read:

"35-8-105. Registered office and registered agent. (1) A limited liability company shall continuously maintain in this state:

(a) a registered office that may but need not be the same as its place of business; and

(b) a registered agent for service of process ~~(, at the registered office)~~, on the limited liability company that is either an individual resident of this state, a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

(3) A limited liability company may change its registered office or registered agent, or both, by delivering to the secretary of state a statement setting forth:

(a) the name of the limited liability company;

(b) ~~the address of its current registered office;~~ *the address of its current registered office;*

~~(c)~~(c) if the address of its registered office is to be changed, the new address of the registered office; *and*

~~(d) the name and address of its current registered agent; and~~

~~(e)~~(d) if its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address.

(4) The change of address of the registered office or registered agent is effective on delivery of the statement to the secretary of state. The appointment of a new registered agent is effective on delivery of the statement to the

secretary of state and on receipt by the secretary of state of evidence that the new registered agent has accepted appointment pursuant to subsection (2).

(5) A registered agent of a limited liability company may resign as registered agent by delivering a written notice and ~~2~~ two copies to the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its registered office and its principal place of business. The appointment of the registered agent terminates 30 days after receipt of the notice by the secretary of state or on the appointment of a new registered agent, whichever occurs first.

(6) If a registered agent changes its address to another place in this state, it may change the address by delivering a statement to the secretary of state as required by subsection (3), except that it need be signed only by the registered agent. The statement must recite that a copy of the statement has been mailed to the limited liability company."

Section 14. Section 35-8-202, MCA, is amended to read:

"35-8-202. Articles of organization. (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) whether the company is a term company and, if so, the term specified;

(c) the *complete street* address of its principal place of business in this state and, if different, its registered office and the name and *complete street* address of its registered agent at the registered office in this state;

(d) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and street addresses of the initial members;

(e) whether one or more members of the company are to be liable for the limited liability company's debts and obligations under 35-8-304(3);

(f) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(g) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) the operating agreement controls as to managers, members, and a member's transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment."

Section 15. Section 35-8-210, MCA, is amended to read:

"35-8-210. Reinstatement of dissolved limited liability company. (1) The secretary of state may:

(a) reinstate a limited liability company that has been dissolved under the provisions of 35-8-209;

(b) restore to a reinstated limited liability company its right to carry on business in this state and to exercise all of its privileges and immunities.

(2) A limited liability company applying for reinstatement shall submit to the secretary of state ~~one original and one copy of~~ the application, executed by a person who was a member at the time of dissolution, setting forth:

(a) the name of the limited liability company;

(b) a statement that the assets of the limited liability company have not been liquidated;

(c) a statement that a majority of its members have authorized the application for reinstatement; and

(d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.

(3) The limited liability company shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; *and*

(b) *all annual reports not yet filed with the secretary of state.*

(4) When all requirements are met and the secretary of state reinstates the limited liability company to its former rights, the secretary of state shall:

(a) conform and file in the office of the secretary of state reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

(6) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was involuntarily dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization."

Section 16. Section 35-8-912, MCA, is amended to read:

"35-8-912. Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The applicant shall file an official application ~~and one copy of the application.~~ The application must:

(a) recite the name of the company and the effective date of its administrative dissolution;

(b) state that the ground for dissolution either did not exist or has been eliminated;

(c) state that the company's name satisfies the requirements of 35-8-103; ~~and~~

(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid; *and*

(e) *include all annual reports not yet filed with the secretary of state.*

(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred."

Section 17. Section 35-12-601, MCA, is amended to read:

"35-12-601. Certificate of limited partnership. (1) In order to form a limited partnership, a certificate of limited partnership must be executed, must be filed in the office of the secretary of state, and must set forth:

(a) the name of the limited partnership;

(b) the *complete street* address of the office and the name and *complete street* address of the agent for service of process required to be maintained by 35-12-507;

(c) the name and the *complete business street* address of each general partner; and

(d) any other matters the general partners, in their sole discretion, determine to include.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section."

Section 18. Section 35-12-606, MCA, is amended to read:

"35-12-606. Filing in the office of the secretary of state. (1) ~~One original and one copy of the~~ *The* certificate of limited partnership and of any certificates of amendment, restatement, or cancellation or of any judicial decree of amendment, restatement, or cancellation must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of the person's authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) endorse on the ~~original and the copy~~ *document* the word "filed" and the day, month, and year of the filing;

(b) file the original in the secretary of state's office; and

(c) return the copy to the person who filed it or the person's representative.

(2) Upon the filing of a certificate of amendment, restatement, or judicial decree of amendment in the office of the secretary of state, the certificate of limited partnership is amended or restated as set forth in the certificate. Upon the effective date of a certificate of cancellation or a judicial decree of cancellation, the certificate of limited partnership is canceled.”

Section 19. Section 35-12-611, MCA, is amended to read:

“35-12-611. Application for renewal of certification. ~~One original and one copy of an~~ The application for renewal of certification of a limited partnership must be executed and delivered to the secretary of state. The application must include but is not limited to the information required by 35-12-601.”

Section 20. Section 35-12-612, MCA, is amended to read:

“35-12-612. Filing of application for renewal of certification — issuance of certificate. (1) If the secretary of state finds that the application for renewal of certification of a limited partnership complies with the provisions of this part, ~~he~~ *the secretary of state* shall, when all fees have been paid as provided by rule:

- (a) endorse on the ~~original and on the copy~~ *application* the word “filed” and the month, day, and year of filing;
- (b) file the original ~~in his office~~; and
- (c) issue a ~~certificate of renewal, to which he shall affix the copy~~ *certification letter*.

(2) The secretary of state shall return to the general partner or partners submitting the application the ~~certificate of renewal, together with an attached copy of the application for renewal of certification of a limited partnership certification letter.~~

Section 21. Section 35-12-1302, MCA, is amended to read:

“35-12-1302. Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state ~~one original and one copy of~~ the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

- (1) the name of the foreign limited partnership and, if different, the name under which it proposes to transact business and register in this state;
- (2) the state in which it was formed and the date of its formation;
- (3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;
- (4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed pursuant to subsection (3) or, if appointed, the agent’s authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;
- (5) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) the name and business address of each general partner; and

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn."

Section 22. Section 35-12-1303, MCA, is amended to read:

"35-12-1303. Issuance of registration. (1) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, ~~he~~ *the secretary of state* shall:

(a) endorse on the application the word "filed" and the month, day, and year ~~of the filing thereof~~ *application was filed*;

(b) file ~~in his office~~ the original of the application; and

(c) issue a certificate of registration to transact business in this state.

(2) The certificate of registration, ~~together with a copy of the application,~~ must be returned to the person who filed the application or ~~his~~ *the person's* representative."

Section 23. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 35, chapter 12, part 6, and the provisions of Title 35, chapter 12, part 6, apply to [section 2].

Approved March 19, 2003

CHAPTER NO. 76

[HB 392]

AN ACT ELIMINATING THE INTERIM UNIVERSAL ACCESS PROGRAM FOR ADVANCED TELECOMMUNICATIONS SERVICES; REPEALING SECTIONS 69-3-856, 69-3-857, 69-3-858, 69-3-859, 69-3-861, AND 69-3-862, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 69-3-856, 69-3-857, 69-3-858, 69-3-859, 69-3-861, and 69-3-862, MCA, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 19, 2003

CHAPTER NO. 77

[HB 601]

AN ACT REQUIRING TOWER ROCK TO REMAIN STATE-OWNED PROPERTY AS A GIFT TO FUTURE GENERATIONS OF MONTANANS IN HONOR OF THE LEWIS AND CLARK EXPEDITION

Be it enacted by the Legislature of the State of Montana:

Section 1. Tower Rock — historic site. (1) A 136-acre site that encompasses Tower Rock, a geologic structure listed in the national register of historic places on March 18, 2002, may not be sold or transferred to a nonstate entity and must remain intact as the property of the state of Montana to recognize the national and local historic significance of the Lewis and Clark expedition, whose members named the rock formation, according to notations in the July 16 and 17, 1805, journals of Meriwether Lewis.

(2) The department of transportation may transfer the land to another state agency, and the provisions of 60-4-201 through 60-4-203 do not apply. In any transfer of the site, the department of transportation may retain access rights where the site abuts interstate 15.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 22, chapter 3, and the provisions of Title 22, chapter 3, apply to [section 1].

Approved March 19, 2003

CHAPTER NO. 78

[HB 29]

AN ACT CLARIFYING THAT PARTICIPATION IN THE BOOT CAMP INCARCERATION PROGRAM MAY REDUCE THE PERIOD OF INCARCERATION BUT NOT THE LENGTH OF A SENTENCE; REQUIRING ADVICE FROM THE PROSECUTING ATTORNEY FOR PARTICIPATION IN THE BOOT CAMP INCARCERATION PROGRAM BY CERTAIN INMATES; AND AMENDING SECTIONS 53-30-402 AND 53-30-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-402, MCA, is amended to read:

“53-30-402. Sentence reduction for offenders. A sentencing court retains jurisdiction for purposes of this section. A sentencing court may order a reduction of *the incarceration period to actually be served under a sentence but may not reduce the length of a sentence* for a convicted offender who:

- (1) is certified by the department as having successfully completed the boot camp incarceration program; and
- (2) applies to the court within 1 year after beginning to serve a sentence at a correctional institution.”

Section 2. Section 53-30-403, MCA, is amended to read:

“53-30-403. Boot camp incarceration program — eligibility — rulemaking. (1) The department shall establish a boot camp incarceration program for offenders incarcerated in a correctional institution.

- (2) In order to be eligible for participation in the boot camp incarceration program, an inmate:
 - (a) must be serving a sentence of at least 1 year in a Montana correctional institution for a felony offense other than a felony punishable by death, except as provided in 46-18-201(4)(o);
 - (b) shall obtain the concurrence of the sentencing court; and

(c) shall pass a physical examination to ensure sufficient health for participation.

(3) The boot camp incarceration program must include:

(a) as a major component, a strong emphasis on work, physical activity, physical conditioning, and good health practices;

(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;

(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be provided to, read by, and signed by all prospective enrollees; and

(d) a maximum enrollment period of 120 days.

(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission of an inmate to the program is discretionary with the department, *which shall request and consider the written recommendation of the prosecuting attorney's office*. Enrollment may be revoked only:

(i) at the participant's request; or

(ii) upon written departmental documentation of a participant's failure or refusal to comply with program requirements.

(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the boot camp incarceration program more than twice.

(5) The department may adopt rules for the establishment and administration of the boot camp incarceration program."

Approved March 19, 2003

CHAPTER NO. 79

[HB 77]

AN ACT PROVIDING A PROCEDURE FOR DNA TESTING OF A PERSON CONVICTED OF A FELONY WHO IS SERVING A TERM OF INCARCERATION; AND REQUIRING THE STATE TO PRESERVE SCIENTIFIC IDENTIFICATION EVIDENCE THAT THE STATE HAS REASON TO BELIEVE CONTAINS DNA MATERIAL AND THAT IS OBTAINED IN CONNECTION WITH A FELONY FOR WHICH A CONVICTION IS OBTAINED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Petition for DNA testing. (1) A person convicted of a felony who is serving a term of incarceration may file a written petition for performance of DNA testing, as defined in 44-6-101, in the court that entered the judgment of conviction. The petition must include the petitioner's statement that the petitioner was not the perpetrator of the felony that resulted in the conviction and that DNA testing is relevant to the assertion of innocence. The petition must be verified by the petitioner under penalty of perjury and must:

(a) explain why the identity of the perpetrator of the felony was or should have been a significant issue in the case;

(b) present a prima facie case that the evidence to be tested has been subject to a chain of custody sufficient to establish that the evidence has not been substituted, tampered with, degraded, contaminated, altered, or replaced in any material aspect;

(c) explain, in light of all the evidence, how the requested testing would establish the petitioner's innocence of the felony;

(d) make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought;

(e) reveal the results of any DNA or other known biological testing that was previously conducted by the prosecution or defense; and

(f) state whether a petition was previously filed under this section and the results of the proceeding.

(2) If the petition does not contain the information required in subsection (1), the court shall return the petition to the petitioner and advise the petitioner that the matter cannot be considered without the missing information.

(3) If subsection (1) is complied with, the court shall order a copy of the petition to be served on the attorney general, the county attorney in the county of conviction, and, if known, the laboratory or government agency holding the evidence sought to be tested. The court shall order that any responses to the petition must be filed within a reasonable time after the date of service under this subsection.

(4) The court may order a hearing on the petition. The hearing must be before the judge who conducted the trial, unless the court determines that that judge is unavailable. Upon request of any party, the court may in the interest of justice order the petitioner to be present at the hearing. The court may consider evidence whether or not it was introduced at the trial.

(5) The court shall grant the petition if it determines that the petition is not made for the purpose of delay and that:

(a) the evidence to be tested:

(i) was secured in relation to the trial that resulted in the conviction;

(ii) is available; and

(iii) is in a condition that would permit the requested testing;

(b) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, degraded, contaminated, altered, or replaced in any material aspect;

(c) the identity of the perpetrator of the felony was or should have been a significant issue in the case;

(d) the petitioner has made a prima facie showing that the evidence sought to be tested is material to the question of whether the petitioner was the perpetrator of the felony that resulted in the conviction;

(e) the requested testing results would establish, in light of all the evidence, whether the petitioner was the perpetrator of the felony that resulted in the conviction; and

(f) the evidence sought to be tested was not previously tested or was tested previously but another test would provide results that are reasonably more discriminating and probative on the question of whether the petitioner was the

perpetrator of the felony that resulted in the conviction or would have a reasonable probability of contradicting the prior test results.

(6) If the court grants the petition, the court shall identify the evidence to be tested. The testing must be conducted by a laboratory mutually agreed upon by the petitioner, the attorney general, and the county attorney in the county of conviction. If the parties cannot agree on a laboratory, the court shall direct a laboratory of the court's choice to conduct the testing. At the request of the attorney general or the county attorney of the county of conviction, the court shall order the evidence submitted to an additional laboratory designated by the requester for additional testing. The court shall impose reasonable conditions on the testing designed to protect the parties' interests in the integrity of the evidence and the testing process.

(7) Testing ordered by the court must be conducted as soon as practicable, and if the court finds that a gross miscarriage of justice would otherwise occur and that it is necessary in the interests of justice to give priority to the DNA testing, the court shall order a laboratory, if located in this state, to give the testing priority over any other pending casework of the laboratory.

(8) The test results must be fully disclosed to the parties.

(9) If the test results are inconclusive, the court may order further appropriate testing or terminate the proceeding. If the test results are not favorable to the petitioner, the court shall:

(a) notify the board of pardons and parole;

(b) order the petitioner's test sample to be included in the DNA identification index established under 44-6-102 and the federal combined DNA index system (CODIS) offender database;

(c) notify any victim and the family of the victim that the test results were not favorable to the petitioner; and

(d) terminate the proceeding.

(10) If the test results are favorable to the petitioner, the court shall order a hearing and after the hearing shall make appropriate orders pursuant to applicable statutes regarding postconviction proceedings.

(11) The court shall order a petitioner who is able to do so to pay the costs of testing. If the petitioner is unable to pay, the court shall order the state to pay the costs of testing. The court shall order additional testing requested by the attorney general or the county attorney of the county of conviction to be paid for by the state.

(12) The remedy provided by this section is in addition to any remedy available under part 1 of this chapter.

Section 2. Preservation and disposal of scientific identification evidence obtained in criminal proceeding. (1) The state shall preserve scientific identification evidence that the state has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The state shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.

(2) The state may propose to dispose of scientific identification evidence before the expiration of the time period described in subsection (1) if the state

notifies the convicted person and any attorney of record for the convicted person. The notification must include a description of the scientific identification evidence, a statement that the state will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within that 120-day period, the state may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required by the interests of justice and the integrity of the criminal justice system.

(3) If a party objects to the disposition of the scientific identification evidence, the state has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 46, chapter 21, and the provisions of Title 46 apply to [sections 1 and 2].

Approved March 19, 2003

CHAPTER NO. 80

[HB 101]

AN ACT CLARIFYING THAT A NONRESIDENT MAY NOT APPLY FOR OR PURCHASE FOR A NONRESIDENT'S USE A RESIDENT WILDLIFE CONSERVATION LICENSE OR HUNTING OR FISHING LICENSE OR PERMIT AND PROVIDING A PENALTY FOR VIOLATION OF THIS PROVISION; AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE LICENSES BY TELEPHONE, ON THE INTERNET, OR BY OTHER ELECTRONIC MEANS; PROVIDING THAT LICENSES NEED NOT BE SUBSCRIBED TO OR COUNTERSIGNED BY THE PERSON ISSUING THE LICENSE; REVISING THE LAWS GOVERNING MISDEMEANOR AND FELONY POSSESSION OF HUNTING LICENSES; ESTABLISHING THE OFFENSE OF MISDEMEANOR AND FELONY POSSESSION OF FISHING LICENSES AND PERMITS; AUTHORIZING THE DEPARTMENT TO ADOPT RULES THAT PRESCRIBE ELIGIBILITY STANDARDS FOR LICENSES OR PERMITS OBTAINED BY TELEPHONE, BY MAIL, ON THE INTERNET, OR BY OTHER ELECTRONIC MEANS; CLARIFYING THAT A PERSON MAY NOT CARRY A LICENSE OR PERMIT OBTAINED IN VIOLATION OF APPLICABLE LAW OR RULE; ALLOWING A PERSON WHO WISHES TO RECEIVE A BOWHUNTING LICENSE TO COMPLETE A NATIONAL BOWHUNTER EDUCATION FOUNDATION PROGRAM OR ANOTHER BOWHUNTER EDUCATION PROGRAM APPROVED BY THE DEPARTMENT; AMENDING SECTIONS 87-2-103, 87-2-105, 87-2-106, 87-2-107, AND 87-2-114, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-103, MCA, is amended to read:

“87-2-103. License required. (1) Except as provided in subsection (2), it is unlawful for a person to:

(a) hunt or trap or attempt to hunt or trap any game animal, any game bird, or any fur-bearing animal or to fish for any fish within this state or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts of those animals or birds, except as provided by law or as provided by the department; or

(b) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or to fish for any fish, except at the places and during the periods and in the manner defined by law or as defined by the department; or

(c) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts of fur-bearing animals without first having obtained a proper *and valid* license or permit from the department to do so; or

(d) trap or attempt to trap predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident as defined in 87-2-102.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to kill or attempt to kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence.”

Section 2. Section 87-2-105, MCA, is amended to read:

“87-2-105. Safety instruction required. (1) A hunting license may not be issued to a resident person who is under 18 years of age unless the person authorized to issue the license receives a certificate of completion from the Montana youth hunter safety and education course established in subsection (5).

(2) A hunting license may not be issued to a nonresident person who is under 18 years of age unless the person authorized to issue the license receives a certificate of completion from the Montana youth hunter safety and education course established in subsection (5) or a certificate verifying that the nonresident has successfully completed a hunter safety course in any state or province.

(3) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-113, who reside in the member's Montana household, unless the person authorized to issue the license receives proof of completion of a hunter safety course approved by the department or a certificate verifying that the member or dependent has successfully completed a hunter safety course in any state or province.

(4) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or receives proof of completion of a bowhunter education course from the national bowhunter education foundation *or any other bowhunter education program approved by the department*. Neither the

department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

(5) The department shall provide for a youth hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate as an instructor any person it finds to be competent to give instructions to youth in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's youth hunter safety and education course to a person successfully completing the course.

(6) The department shall provide for a course of instruction from the national bowhunter education foundation *or any other bowhunter education program approved by the department* and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give the national bowhunter education foundation instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion from the national bowhunter education foundation to any person successfully completing the course.

(7) The department may develop an adult hunter education course.

(8) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion or achievement."

Section 3. Section 87-2-106, MCA, is amended to read:

"87-2-106. Application for license — penalties for violation — forfeiture of privileges. (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is ~~unlawful and~~ a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by *telephone, by mail, on the internet, or by other electronic means*. Statements on an application for a license to be issued by *telephone, by mail, on the internet, or by other electronic means* need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee ~~and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.~~

(6) It is unlawful to subscribe to *or make* any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.

(7) *It is unlawful for a nonresident to apply for or purchase for a nonresident's use the following resident licenses and permits:*

- (a) *wildlife conservation license;*
- (b) *hunting license or permit; or*
- (c) *fishing license or permit.*

~~(7)~~(8) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to *or making* a false statement to obtain a resident license *or who is convicted of applying for or purchasing a resident license in violation of subsection (7)* shall be:

- (i) fined not less than the greater of \$100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than \$1,000;
- (ii) imprisoned in the county jail for not more than 6 months; or
- (iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection ~~(7)(a)~~ (8)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

~~(8)~~(9) It is ~~unlawful and~~ a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

~~(9)~~(10) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

~~(10)~~(11) The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)”

Section 4. Section 87-2-107, MCA, is amended to read:

“87-2-107. License form. The form of the license ~~shall~~ *must* be determined and the license blanks prepared by the department and furnished by it to the officers and persons authorized to issue the ~~same license. Said licenses shall~~ *Licenses must* be issued in the name of the department ~~and be countersigned by~~

the officer or person issuing the same. Each license issued shall *must* be signed by the licensee in ink or indelible pencil on the face ~~thereof of the license.~~"

Section 5. Section 87-2-114, MCA, is amended to read:

"87-2-114. Unlawful Misdemeanor and felony possession of hunting or fishing license or permit of another — penalties. (1) Except as provided in subsection (2), ~~it is unlawful for a~~ a person ~~to~~ *commits the offense of unlawful possession of a hunting or fishing license or permit if the person ~~carry~~ knowingly, as defined in 45-2-101, carries or ~~have~~ has physical control over a valid and unused:*

(a) hunting license or permit issued to another person while in any location that the species to be hunted may inhabit;

(b) *resident hunting license or permit or resident fishing license or permit issued to a nonresident; or*

(c) *hunting license or permit or fishing license or permit that was issued in violation of applicable law or rule.*

(2) The following exceptions apply to the prohibition in subsection (1):

(a) A person may carry or have physical control over a license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person.

(b) The prohibition does not apply to a properly *obtained and validated* license or permit attached to a lawfully killed game animal.

(3) Except as provided in subsection (4), a person who violates this section is guilty of a misdemeanor *and is* punishable as provided in 87-1-102(1).

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses that are issued to another person or persons and that are used or intended to be used on game animals not taken by the person or persons to whom the licenses were issued, *or by knowingly, as defined in 45-2-101, carrying, having physical control of, or selling two or more licenses or permits that were issued in violation of applicable law or rule,* is guilty of a felony and upon conviction shall be fined not more than \$50,000, imprisoned in the state prison for not more than 5 years, or both.

(5) In addition to the penalties set out in subsections (3) and (4), a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permit and license privileges for not less than 3 years or up to a lifetime revocation from the date of conviction."

Section 6. Eligibility standards for licenses or permits obtained by telephone, mail, or electronic means — rulemaking. The department may adopt rules that prescribe requirements necessary to determine that an applicant meets the eligibility requirements provided in this part when the applicant obtains a license or permit by telephone, by mail, on the internet, or by other electronic means.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [section 6].

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective July 1, 2003.

Approved March 20, 2003

CHAPTER NO. 81

[HB 116]

AN ACT ESTABLISHING A DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION IN THE DEPARTMENT OF JUSTICE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Domestic violence fatality review commission — confidentiality of meetings and records — criminal liability for unauthorized disclosure — report to legislature. (1) There is a domestic violence fatality review commission in the department of justice.

(2) The commission shall:

(a) examine the trends and patterns of domestic violence-related fatalities in Montana;

(b) educate the public, service providers, and policymakers about domestic violence fatalities and strategies for intervention and prevention; and

(c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities due to domestic violence.

(3) The members of the commission, not to exceed 18, are appointed by the attorney general from among the following disciplines:

(a) representatives from state departments that are involved in issues of domestic abuse;

(b) representatives of private organizations that are involved in issues of domestic abuse;

(c) medical and mental health care providers who are involved in issues of domestic abuse;

(d) representatives from law enforcement, the judiciary, and the state bar of Montana;

(e) representatives of Montana Indian tribes;

(f) other concerned citizens; and

(g) a member of the legislature who serves on either the house judiciary committee or the senate judiciary committee.

(4) The members shall serve without compensation by the commission but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, and members who are full-time salaried officers or employees of this state or of any political subdivision of this state are entitled to their regular compensation. The provisions of 2-15-122 do not apply to the commission.

(5) The commission shall review fatalities that are not under investigation and fatalities in cases that have been adjudicated and have received a final judgment.

(6) Upon written request from the commission, a person who possesses information or records that are necessary and relevant to a domestic violence fatality review shall, as soon as practicable, provide the commission with the information and records. A person who provides information or records upon request of the commission is not criminally or civilly liable for providing information or records in compliance with this section.

(7) The meetings and proceedings of the commission are confidential and are exempt from the provisions of Title 2, chapter 3.

(8) The records of the commission are confidential and are exempt from the provisions of Title 2, chapter 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by a district court judge and ordered to be provided to the person seeking access. The commission shall disclose conclusions and recommendations upon request but may not disclose information, records, or data that are otherwise confidential. The commission may not use the information, records, or data for purposes other than those designated by subsections (2)(a) and (2)(c).

(9) The commission may require any person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings. In addition, the commission may enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential information.

(10) A member of the commission who knowingly uses information obtained pursuant to subsection (6) for a purpose not authorized in subsection (2) or who discloses information in violation of subsection (8) is subject to a civil penalty of not more than \$500.

(11) The commission shall report its findings and recommendations in writing to the legislature, the attorney general, the governor, and the chief justice of the Montana supreme court no later than the third Tuesday in January of each year in which the legislature meets in regular session. The report must be made available to the public through the office of the attorney general. The commission may issue data or other information periodically, in addition to the biennial report.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Termination. [This act] terminates December 31, 2006.

Approved March 20, 2003

CHAPTER NO. 82

[HB 137]

AN ACT REPEALING THE TERMINATION DATE FOR THE REQUIREMENT THAT AT LEAST 50 PERCENT OF FISHING LICENSE

FUNDS ALLOCATED FOR FISHING ACCESS SITES AND STREAM, RIVER, AND LAKE FRONTAGES BE USED FOR OPERATION AND MAINTENANCE AND BE PRIORITIZED AND EXPENDED FOR WEED MANAGEMENT, STREAMBANK RESTORATION, AND GENERAL OPERATION AND MAINTENANCE; REPEALING SECTION 4, CHAPTER 428, LAWS OF 1995, AND SECTION 1, CHAPTER 109, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 4, Chapter 428, Laws of 1995, and section 1, Chapter 109, Laws of 1999, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2003

CHAPTER NO. 83

[HB 150]

AN ACT EXEMPTING PROVIDERS OF COMPANIONSHIP SERVICES OR RESPITE CARE FOR THE AGED OR INFIRM FROM WAGE AND HOUR REQUIREMENTS TO CONFORM TO FEDERAL LAW; EXEMPTING THE PROVISION OF COMPANIONSHIP SERVICES OR RESPITE CARE TO THE AGED OR INFIRM FROM MINIMUM WAGE AND OVERTIME, UNEMPLOYMENT INSURANCE, AND WORKERS' COMPENSATION INSURANCE IF THE PERSON PROVIDING THE SERVICE IS EMPLOYED DIRECTLY BY THE FAMILY OR A LEGAL GUARDIAN; AND AMENDING SECTIONS 39-3-406, 39-51-204, AND 39-71-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

- (a) students participating in a distributive education program established under the auspices of an accredited educational agency;
- (b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;
- (c) persons employed directly by the head of a household to care for children dependent upon the head of the household;
- (d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;
- (e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;
- (f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;
- (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, or in an outside sales capacity, as defined in 29 CFR 541.5;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal-care facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person 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.

(p) an employee employed in domestic service employment to provide ~~live-in~~ companionship services, as defined in 29 CFR 552.6, *or respite care* for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, *when the person providing the service is employed directly by a family member or an individual who is a legal guardian.*

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day,

40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation."

Section 2. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act; ~~or~~

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873; or

(y) *service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian.*

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act.”

Section 3. Section 39-71-401, MCA, is amended to read:

“39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers’ Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers’ Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers’ Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (c) employment of a dependent member of an employer’s family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);
- (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;
- (f) employment as a direct seller as defined by 26 U.S.C. 3508;
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
- (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;
- (k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, “freelance correspondent” is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, “newspaper carrier”:

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B).

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is a \$25 fee for the initial application. Any subsequent application renewal must be accompanied by a \$25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 3 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall every 3 years submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved on or after July 1, 1995. The renewal application and the \$25 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Approved March 19, 2003

CHAPTER NO. 84

[HB 187]

AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING REGULATION OF FISH; DESIGNATING YELLOW PERCH AND CRAPPIE AS GAME FISH; AUTHORIZING A PURCHASER OF A RESIDENT TEMPORARY FISHING LICENSE TO PURCHASE A PADDLEFISH TAG; PROVIDING THAT A SCIENTIFIC COLLECTION PERMITTEE MAY NOT COLLECT FISH USING ANY EXPLOSIVE; ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION TO AUTHORIZE THE TAKING OF WHITEFISH WITH SPEARS OR GIGS; REVISING THE LAWS GOVERNING REGULATION OF FISHING TO CHANGE THE TERM "DEPARTMENT" TO "COMMISSION" TO MAKE THE LAW CONSISTENT WITH THE DUTY OF THE COMMISSION TO ESTABLISH FISHING RULES; ELIMINATING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO AUTHORIZE TAKING BLACK BASS IN FLATHEAD LAKE; ELIMINATING THE AUTHORITY TO AUTHORIZE SNAGGING OF COHO (SILVER SALMON)

AND AUTHORIZING THE SNAGGING OF CHINOOK SALMON; EXPANDING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT AND THE COMMISSION TO REGULATE COMMERCIAL FISH OPERATIONS; AMENDING SECTIONS 87-2-101, 87-2-306, 87-2-806, 87-3-204, 87-3-205, 87-4-601, 87-4-609, AND 87-4-610, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-101, MCA, is amended to read:

“87-2-101. Definitions. As used in ~~this chapter, chapter 3, and 87-1-102, chapter 3, and this chapter~~, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Angling” or “fishing” means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) (a) “Bait” means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(3) “Closed season” means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

(4) “Commission” means the state fish, wildlife, and parks commission.

(5) “Fur-bearing animals” means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(6) “Game animals” means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(7) “Game fish” means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); *the species perca flavescens (yellow perch); all species of the genus pomoxis (crappie); and the species ictalurus punctatus (channel catfish).*

(8) “Hunt” means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(9) “Migratory game birds” means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails,

including coots; wilson's snipes or jacksnipes; and mourning doves; however, the open season on mourning doves is restricted to the open season on upland game birds as defined in subsection (15).

(10) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(11) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(12) "Person" means individuals, associations, partnerships, and corporations.

(13) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(14) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(15) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, quail, pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(16) "Wild buffalo" means buffalo or bison that have not been reduced to captivity."

Section 2. Section 87-2-306, MCA, is amended to read:

"87-2-306. Paddlefish tags. (1) The department may issue paddlefish tags to persons listed in subsection (2) for a fee of \$5 for residents and \$15 for nonresidents. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department.

(2) The following persons may obtain paddlefish tags pursuant to this section:

(a) holders of valid Class A, *Class A-8*, Class B, and Class B-4 fishing licenses;

(b) residents under 15 years of age with a valid wildlife conservation license; and

(c) residents 62 years of age or older with a valid wildlife conservation license."

Section 3. Section 87-2-806, MCA, is amended to read:

"87-2-806. Taking fish or game for scientific purposes. (1) ~~It is lawful for the~~ ~~And~~ ~~only~~ ~~accredited~~ ~~representative~~ ~~of~~ ~~an~~ ~~accredited~~ ~~school,~~ ~~college,~~ ~~university,~~ ~~or~~ ~~other~~ ~~institution~~ ~~of~~ ~~learning~~ ~~or~~ ~~of~~ ~~any~~ ~~governmental~~ ~~agency~~ ~~or~~ ~~for~~ ~~an~~ ~~individual,~~ ~~who~~ ~~may~~ ~~be~~ ~~is~~ ~~investigating~~ ~~a~~ ~~scientific~~ ~~subject~~ ~~for~~ ~~which~~ ~~collection~~ ~~may~~ ~~be~~ ~~is~~ ~~necessary,~~ ~~to~~ ~~may~~ ~~take,~~ ~~kill,~~ ~~capture,~~ ~~and~~ ~~possess~~ ~~for~~ ~~that~~ ~~purpose~~ ~~any~~ ~~birds,~~ ~~fish,~~ ~~or~~ ~~animals~~ ~~protected~~ ~~by~~ ~~Montana~~ ~~law~~ ~~or~~ ~~state~~ ~~fish~~ ~~and~~ ~~game~~ ~~department~~ ~~or~~ ~~commission~~ ~~rule,~~ ~~provided~~ ~~that~~ ~~if~~ ~~a~~ ~~permit~~ ~~to~~ ~~collect~~ ~~is~~ ~~authorized~~ ~~by~~ ~~the~~ ~~department.~~ ~~Under~~ ~~the~~ ~~provisions~~ ~~of~~ ~~this~~ ~~section,~~ ~~a~~ ~~permittee~~ ~~may~~ ~~take,~~ ~~kill,~~ ~~and~~ ~~capture~~ ~~protected~~ ~~or~~ ~~unprotected~~ ~~birds,~~ ~~fish,~~ ~~or~~ ~~animals~~ ~~in~~ ~~any~~ ~~way~~ ~~that~~ ~~is~~ ~~approved~~ ~~by~~ ~~the~~ ~~department,~~ ~~except~~ ~~by~~ ~~the~~ ~~explosion~~ ~~of~~ ~~dynamite~~ ~~use~~ ~~of~~ ~~explosives.~~ A permittee may not take, kill, or capture more birds, fish, or animals than are necessary for the investigation. A collection permit may not be given for a species for which a taking is prohibited by statute or rule.

(2) A person who desires to engage in the scientific investigation shall apply to the department for a permit. The department may require the applicant to submit a plan of operations that includes the purpose for the collection, collection methodology to be employed, and the qualifications of the person who will be doing the collecting. The department may set qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit. If the department is satisfied of the good faith and qualifications of the applicant and that the collecting is necessary for a valid purpose, the department:

(a) may issue a permit that must place a time limit on the collections and may place a restriction on the number of birds, fish, or animals to be taken; and

(b) shall require a report of the numbers and species of animals taken by collection areas.

(3) The department may deny a permit if:

(a) the applicant is not qualified to make the scientific investigation;

(b) the proposed collecting is not necessary for the proposed scientific investigation;

(c) the method of collecting is not appropriate;

(d) the proposed collecting may threaten the viability of the species; or

(e) there is no valid reason or need for the proposed scientific investigation.

(4) By December 31 of each year, a permittee ~~is required to~~ shall submit a report to the department that lists the species and numbers of individuals of the species taken and locations from which collections were taken. A permittee who fails to file a required report may not be issued another permit.

(5) The permittee shall pay \$50 for the permit, except that a permittee who is a representative of an accredited school, college, university, or other institution of learning or of any governmental agency is exempt from payment of the fee.

(6) The permittee may not take, have, or capture any other or greater number of birds, fish, or animals than are allowed in the permit.

(7) A representative of an accredited school, college, university, or other institution of learning or an individual permittee who may have various students or associates assisting throughout the year may apply to have a permit issued that includes the individual and the students or associates. The department shall approve the qualifications of a student or an associate and the level of supervision required by the primary permittee. The students or associates, when carrying a copy of the permit, have the same authorizations and restrictions as the primary applicant. The primary applicant shall keep a record of all students or associates listed on the permit and of the dates when each student or associate conducts a collection under the permit. The primary applicant is responsible for the students' or associates' use of the permit or copies of the permit."

Section 4. Section 87-3-204, MCA, is amended to read:

"87-3-204. Restrictions on fishing methods — allowed fishing methods. (1) ~~No~~ A game fish may *not* be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any ~~such set~~ gun, trap, or other device to entrap game fish be used, made, or set.

(2) ~~It~~ Except when specifically authorized by law or commission rule, it is unlawful for a person to:

(a) take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand or within immediate control; ~~to~~

(b) take or catch fish with hook baited with any poisonous substance or ~~by means of the use of~~ using any poisonous substance, including fish berries; or ~~to~~

(c) take or catch fish ~~by means of the use of~~ using fishtraps, grabhooks, seines, nets, spears, gigs, or other similar means for catching fish.

~~(3) The department may designate such waters within the state of Montana wherein, in the judgment of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish and traps, seines, nets, and rubber or spring-propelled spears, when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish. The waters so designated may be closed at the discretion of the department. The taking of all fish by such means in the waters, when so designated, is to be done under such rules as the department may prescribe with reference thereto and under the supervision of the department. All such nongame fish so taken may be possessed and sold in such manner and under such restrictions as the department may direct. All fish, other than those herein designated, so taken under department rules, when prescribed by the department, shall be returned uninjured to the waters from which they were taken.~~

~~(4) The taking of black bass in Flathead Lake may be permitted by the department.~~

(3) (a) The commission may designate waters within the state in which rubber or spring-propelled spears employed by persons swimming or submerged in the water or traps, seines, nets, spears, or gigs may be used for taking:

(i) nongame fish; or

(ii) walleyed pike, sauger, northern pike, burbot (ling), and whitefish.

(b) The commission may adopt rules for the taking of fish under this subsection (3), and the rules may be specific to the water designated. The designated waters may be closed at the discretion of the commission.

(c) Except when the taking of game fish is authorized pursuant to subsection (3)(a)(ii), all game fish captured while fishing as authorized under this subsection (3) must be returned uninjured to the waters from which they were taken.

~~(5)(4) The department shall have the power to~~ commission may designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the ~~department~~ commission may designate the number of hooks and lines and the length of line or lines ~~which that~~ may be used as setlines.

~~(6)(5) Game fish shall must be taken only by angling; that is, by hook and single line in hand or single rod in hand or within immediate control. This does not prevent, however:~~

(a) the snagging of paddlefish, ~~coho (silver salmon)~~, chinook salmon, and kokanee (sockeye salmon) when the ~~department~~ commission declares an open season when paddlefish, ~~coho (silver salmon)~~, chinook salmon, and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow, under ~~such rules and regulations as that the fish, wildlife, and parks commission may prescribe~~ *prescribes*;

(c) the taking of ~~walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig when the department declares an open season for taking walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig game fish pursuant to subsection (3);~~

(d) the use of landing net or gaff to land a game fish after the ~~same game fish~~ has been hooked ~~by angling as above specified in this subsection (5);~~

(e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in ~~such waters as may be designated by the department~~ *commission*;

(f) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under ~~such the rules and regulations as that the fish, wildlife, and parks commission may prescribe~~ *prescribes*; or

(g) the taking of any game fish through a hole in ice with an unattended line or rod as long as the angler is in the vicinity and within visual contact of the line or rod.

(6) *The commission may designate waters where authorized commercial fishing operators may use approved nets, seines, and traps to fish for designated species of nongame fish.*

Section 5. Section 87-3-205, MCA, is amended to read:

“87-3-205. Unlawful to possess net or seine — exceptions. (1) It is unlawful for ~~any~~ a person or ~~persons~~ to have in ~~their~~ *the person's* possession or under ~~their~~ *the person's* control ~~any~~ a seine, net, or other similar device for capturing fish. A seine or net found in ~~any~~ a vehicle, at the camp, or on the premises of ~~any~~ a person ~~shall be~~ *is* prima facie evidence that the seine, net, or similar device belongs to the person or persons occupying ~~said~~ *the* camp or premises.

(2) ~~Nothing contained herein shall~~ *The provisions of this section do not apply* to:

(a) ~~the owners of a license holder for a private fish ponds pond who is licensed to sell fish and eggs, as defined under the statute under 87-4-603;~~

(b) a person or persons having ~~unexpired~~ *with an unexpired* seine or net license, ~~as provided for in the statutes of Montana;~~

(c) the use, by any person, of a landing net in connection or in addition to pole, line, and hooks in fishing for game fish; or

(d) the possession of traps, seines, or nets ~~where~~ *when* found in the vicinity of any waters ~~which that the department commission has designated within the state where in which~~ traps, seines, or nets may be used for the taking of nongame fish ~~and Dolly Varden trout, as provided for in the statutes of Montana or game fish.”~~

Section 6. Section 87-4-601, MCA, is amended to read:

“87-4-601. (Temporary) Sale of fish or spawn unlawful — exceptions. (1) Except as provided in subsections (2) ~~and (3)~~ *through (4)*, a person may not, for speculative purposes, for market, or for sale, in any way, catch ~~any of the fish which in this title are classified as~~ game fish or remove or cause to be removed

the eggs or spawn of any ~~such~~ *game fish*. ~~No~~ A person may *not* sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn from any game fish.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish *or the collecting of eggs or spawn in a private ponds fish pond licensed under 87-4-603 by the owners of private ponds owner of the pond*;

(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for ~~propagation purposes~~ *use in a private fish pond licensed under 87-4-603*;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules ~~and regulations~~ of the ~~department~~ *commission*;

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under rules ~~and regulations as that~~ the ~~fish, wildlife, and parks~~ commission ~~may prescribe prescribes~~, or

(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) (a) A person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish from the Yellowstone River between the burlington northern railroad bridge at Glendive to the confluence of Cottonwood Creek and the Yellowstone River during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection (3)(b) for processing and marketing as caviar. A paddlefish may be brought only to the Intake fishing access site for donation to the paddlefish roe donation program and must be a properly tagged, whole paddlefish. Roe separated from the paddlefish is not acceptable for donation to the program. A paddlefish intentionally cut in any manner to identify its sex is also unacceptable for donation to the program.

(b) The department shall develop rules for selecting one Montana nonprofit organization to accept paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules for the marketing and sale of caviar under this section.

(c) The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection (3)(b) specifying times, sites, and other conditions under which paddlefish eggs may be collected. The agreement must require the organization to maintain records of revenue collected and related expenses incurred and to make the records available to the department and the legislative auditor upon request.

(d) (i) Forty percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be deposited in a state special revenue fund established for the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery, including fishing access, administration, improvements, habitat, and fisheries management, or to provide information to the public regarding fishing in eastern Montana, which could include the design and construction of interpretive displays.

(ii) Sixty percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be paid to the nonprofit organization that processes and markets the caviar. The nonprofit organization's administrative costs must be paid from its share of the proceeds. An advisory committee must be appointed by the commission and consist of one member from the organization selected pursuant to the rules provided for in subsection (3)(b), two area local government representatives, and two representatives of area ~~sportsmen~~ *sports-interested persons*. The advisory committee shall solicit and review historical, cultural, recreational, and fish and wildlife proposals and fund projects. The committee shall notify the commission of its actions. Proceeds may be used as seed money for grants.

(4) *A person may possess and sell legally taken nongame fish, as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609. (Terminates June 30, 2003—sec. 2, Ch. 196, L. 1993.)*

87-4-601. (Effective July 1, 2003) Sale of fish or spawn unlawful — exceptions. (1) Except as provided in ~~subsection~~ *subsections (2) and (3)*, ~~no~~ a person may *not*, for speculative purposes, for market, or for sale, in any way, catch ~~any of the fish which in this title are classified as~~ game fish or remove or cause to be removed the eggs or spawn of any ~~such game fish~~. ~~No~~ A person may *not* sell or offer for sale ~~any of the game fish of this state as defined in this title~~ or the eggs or spawn ~~therefrom~~ *from game fish*.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish *or the collecting of eggs or spawn in a private pond fish pond licensed under 87-4-603 by the* ~~owners thereof~~ *owner of the pond*;

(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for ~~such purposes~~ *use in a private fish pond licensed under 87-4-603*;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules ~~and regulations~~ *of the department commission*;

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under ~~such rules and regulations as that the fish, wildlife, and parks commission may prescribe~~ *prescribes*; or

(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) *A person may possess and sell legally taken nongame fish, as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609.*

Section 7. Section 87-4-609, MCA, is amended to read:

“87-4-609. Regulation of commercial taking of fish or aquatic fish food organisms — permit — rulemaking authority. (1) The department shall regulate the taking, for sale or commercial distribution, of:

(a) crayfish for fishing bait;

(b) crayfish from private fish ponds regulated under 87-4-603;

(c) mysis shrimp;

(d) *designated species of nongame fish in waters designated by the commission pursuant to 87-3-204*;

(e) *whitefish as authorized by statute*; and

(f) other aquatic organisms ~~that provide a food source for fish.~~

(2) It is unlawful for a person to take *fish or aquatic fish-~~food~~* organisms for commercial purposes without obtaining a permit from the department. A permit applicant shall provide the department with sufficient details of the proposed operation to take any *fish or aquatic fish-~~food~~* organism for sale or commercial distribution to enable the department to evaluate any potential overharvest or conflict with existing fishing and recreational uses of the waters.

(3) The department may:

(a) deny a permit if it determines that there is substantial potential that the proposed operation may harm a fishery or conflict with existing recreational uses of the waters;

(b) condition a permit to restrict the method of taking, the location of the taking, and the quality and quantity of harvest, to prevent overharvest or conflict with existing fishing and recreational uses of the waters; or

(c) require a permittee to submit harvest data to the department.

(4) A permit may be revoked for a violation of the conditions of the permit.

(5) The department may adopt rules for the regulation of commercial taking of *fish or aquatic fish-~~food~~* organisms, including but not limited to the setting of seasons, methods of taking, quantities of harvest, size limitations, and reporting requirements, ~~for a particular aquatic fish-~~food~~ organism, in order~~ to prevent overharvest or conflict with fishing and recreational uses of the waters.”

Section 8. Section 87-4-610, MCA, is amended to read:

“87-4-610. Fees for commercial taking of *fish or aquatic fish-~~food~~* organisms — use of fees. (1) To finance the administration and enforcement of the provisions of 87-4-609, the department may by rule set reasonable fees for:

(a) issuance of the permit required in 87-4-609; and

(b) use of traps, nets, or seines in Montana waters for the *commercial* taking of *nongame fish, whitefish, as authorized by statute, or aquatic fish-~~food~~* organisms.

(2) The department shall deposit any fees collected under the provisions of subsection (1) in the state special revenue fund for use by the department.”

Section 9. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2003

CHAPTER NO. 85

[HB 321]

AN ACT PROVIDING FOR MEDICAL ASSISTANTS; PROVIDING A DEFINITION OF “MEDICAL ASSISTANT”; PROVIDING FOR EXEMPTION FROM LICENSING REQUIREMENTS; PROVIDING FOR PHYSICIAN OR PODIATRIST SUPERVISION OF AND RESPONSIBILITY FOR A MEDICAL ASSISTANT; REQUIRING THE BOARD OF MEDICAL EXAMINERS TO ADOPT GUIDELINES BY ADMINISTRATIVE RULE REGARDING THE PERFORMANCE OF ADMINISTRATIVE AND CLINICAL TASKS;

AMENDING SECTIONS 37-3-102, 37-3-103, 37-3-303, AND 37-3-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-102, MCA, is amended to read:

“37-3-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Approved internship” means an internship training program of at least 1 year in a hospital that is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board may, upon investigation, approve any other internship.

(2) “Approved medical school” means a school that either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) “Approved residency” means a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board may upon investigation approve any other residency.

(4) “Board” means the Montana state board of medical examiners provided for in 2-15-1731.

(5) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) “Medical assistant” means an unlicensed allied health care worker who functions under the supervision of a physician or podiatrist in a physician’s or podiatrist’s office and who performs administrative and clinical tasks.

~~(6)~~(7) “Practice of medicine” means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter.”

Section 2. Section 37-3-103, MCA, is amended to read:

“37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided

with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the United States public health service or of the United States department of veterans affairs of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, *medical assistant, as provided in [section 5]*, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103;

(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(q) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title

"M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 3. Section 37-3-303, MCA, is amended to read:

"37-3-303. Practice authorized by physician's certificate. The physician's certificate authorizes the holder to perform one or more of the acts embraced in 37-3-102(6)(7) in a manner reasonably consistent with ~~his~~ *the holder's* training, skill, and experience."

Section 4. Section 37-3-304, MCA, is amended to read:

"37-3-304. Practice authorized by temporary certificate. The temporary certificate, ~~which~~ may be issued to any citizen or to an alien otherwise qualified for a physician's certificate ~~and which may be issued~~ for a period not to exceed 1 year; ~~and is~~ subject to renewal for additional periods of 1 year, ~~but not to exceed five such renewals, at the discretion of the board.~~ *The temporary certificate* authorizes the holder to perform one or more of the acts embraced in 37-3-102(6)(7) in a manner reasonably consistent with ~~his~~ *the holder's* training, skill, and experience, ~~subject, nevertheless, to all specifications, conditions, and limitations imposed by the board.~~"

Section 5. Medical assistants — guidelines. (1) The board shall adopt guidelines by administrative rule for:

(a) the performance of administrative and clinical tasks by a medical assistant that are allowed to be delegated by a physician or podiatrist, including the administration of medications; and

(b) the level of physician or podiatrist supervision required for a medical assistant when performing specified administrative and clinical tasks delegated by a physician or podiatrist. However, the board shall adopt a rule requiring onsite supervision of a medical assistant by a physician or podiatrist for invasive procedures, administration of medication, or allergy testing.

(2) The physician or podiatrist who is supervising the medical assistant is responsible for:

(a) ensuring that the medical assistant is competent to perform clinical tasks and meets the requirements of the guidelines;

(b) ensuring that the performance of the clinical tasks by the medical assistant is in accordance with the board's guidelines and good medical practice; and

(c) ensuring minimum educational requirements for the medical assistant.

(3) The board may hold the supervising physician or podiatrist responsible in accordance with 37-1-410 or 37-3-323 for any acts of or omissions by the medical assistant acting in the ordinary course and scope of the assigned duties.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 37, chapter 3, part 1, and the provisions of Title 37, chapter 3, part 1, apply to [section 5].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2003

CHAPTER NO. 86

[HB 366]

AN ACT ALLOWING THE TRUSTEES OF CERTAIN SCHOOL DISTRICTS TO HOLD QUARTERLY MEETINGS INSTEAD OF FOUR MEETINGS IN SPECIFIC MONTHS; AMENDING SECTION 20-3-322, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-322, MCA, is amended to read:

“20-3-322. Meetings and quorum. (1) The trustees of a district shall hold at least the following number of regular meetings:

- (a) an organization meeting, as prescribed by 20-3-321;
- (b) a final budget meeting, as prescribed by 20-9-131; and
- (c) in first-class elementary districts, not less than one regular meeting each month; or
- (d) in any other district, regular meetings ~~during the months of April, August, October, and January~~ *at least quarterly.*

(2) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency, meetings must be conducted in school buildings or in a publicly owned building located within the district.

(3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency.

(4) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of subsection (3), “unforeseen emergency” means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district.”

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved March 20, 2003

CHAPTER NO. 87

[HB 511]

AN ACT AUTHORIZING A GOVERNING BODY TO ADOPT OR REVISE CERTAIN ZONING REGULATIONS THAT ARE CONSISTENT WITH A MASTER PLAN THAT WAS ADOPTED BEFORE OCTOBER 1, 1999, AND THAT DOES NOT MEET THE REQUIREMENTS OF A GROWTH POLICY

AND SPECIFYING THAT THE ADOPTION OR REVISION MUST BE MADE BEFORE OCTOBER 1, 2006; AUTHORIZING THE REPEAL AND REVISION OF A MASTER PLAN FOLLOWING THE PROCEDURES IN LAW FOR REPEAL AND REVISION OF A GROWTH POLICY; AMENDING SECTIONS 76-1-604, 76-2-201, 76-2-203, 76-2-206, 76-2-303, AND 76-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-604, MCA, is amended to read:

“76-1-604. Adoption, revision, or rejection of growth policy. (1) The governing bodies shall adopt a resolution of intention to adopt, revise, or reject the proposed growth policy or any of its parts.

(2) If the governing bodies adopt a resolution of intention to adopt the proposed growth policy or any of its parts, they may, in their discretion, submit to the qualified electors of the jurisdictional area covered by the proposed growth policy at the next primary or general election or at a special election the referendum question of whether or not the growth policy should be adopted. A special election must be held in conjunction with a regular or primary election. Except as provided in this section, the provisions of Title 7, chapter 5, part 1, apply to the referendum election.

(3) The governing bodies may adopt, revise, or repeal a growth policy under this section.

(4) The qualified electors of the jurisdictional area included within the growth policy may by initiative or referendum, as provided in 7-5-131 through 7-5-137, adopt, revise, or repeal a growth policy under this section.

(5) *A master plan adopted pursuant to this chapter before October 1, 1999, may be repealed following the procedures in this section for repeal of a growth policy.*

(6) *Until October 1, 2006, a master plan that was adopted pursuant to this chapter before October 1, 1999, may be revised following the procedures in this chapter for revision of a growth policy.”*

Section 2. Section 76-2-201, MCA, is amended to read:

“76-2-201. County zoning authorized. (1) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy for the entire jurisdictional area pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.

(2) *For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that adopted a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may, until October 1, 2006, adopt or revise zoning regulations that are consistent with the master plan.”*

Section 3. Section 76-2-203, MCA, is amended to read:

“76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

(a) made in accordance with the growth policy or a master plan, as provided for in 76-2-201(2), and ~~must be~~

(b) designed to:

- (i) lessen congestion in the streets; ~~to~~
- (ii) secure safety from fire, panic, and other dangers; ~~to~~
- (iii) promote public health and general welfare; ~~to~~
- (iv) provide adequate light and air; ~~to~~
- (v) prevent the overcrowding of land; ~~to~~
- (vi) avoid undue concentration of population; and ~~to~~

(vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.”

Section 4. Section 76-2-206, MCA, is amended to read:

“76-2-206. Interim zoning map or regulation. (1) The board of county commissioners may adopt an interim zoning map or regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

- (a) the purpose of the interim zoning map or regulation is to classify and regulate those uses and related matters that constitute the emergency; and
- (b) the county:
 - (i) is conducting or in good faith intends to conduct studies within a reasonable time; or
 - (ii) has held or is holding a hearing for the purpose of considering any of the following:
 - (A) a growth policy;
 - (B) zoning regulations; or
 - (C) ~~an amendment, extension, or addition~~ a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) An interim resolution must be limited to 1 year from the date it becomes effective. The board of county commissioners may extend the interim resolution for 1 year, but not more than one extension may be made.”

Section 5. Section 76-2-303, MCA, is amended to read:

“76-2-303. Procedure to administer certain annexations and zoning laws — hearing and notice. (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed, subject to the requirements of subsection (2).

(2) A regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days’ notice of the time and place of the hearing must be

published in an official paper or a paper of general circulation in the municipality.

(3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation, provided that the proposed municipal zoning regulations for the annexed property:

(i) authorize land uses comparable to the land uses authorized by county zoning;

(ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to part 1 or 2 of this chapter; or

(iii) are consistent with zoning requirements recommended in ~~the~~ a growth policy adopted pursuant to chapter 1 of this title *or in a master plan, as provided for in 76-2-304(3)*, for the annexed property.

(b) A joint hearing authorized under this subsection fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation."

Section 6. Section 76-2-304, MCA, is amended to read:

"76-2-304. Purposes of zoning. (1) Zoning regulations must be:

(a) *except as provided in subsection (3)*, made in accordance with a growth policy; and

(b) designed to:

(i) lessen congestion in the streets; ~~to~~

(ii) secure safety from fire, panic, and other dangers; ~~to~~

(iii) promote health and the general welfare; ~~to~~

(iv) provide adequate light and air; ~~to~~

(v) prevent the overcrowding of land; ~~to~~

(vi) avoid undue concentration of population; and ~~to~~

(vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

(3) *Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999.*"

Section 7. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2003

CHAPTER NO. 88

[HB 636]

AN ACT REVISING LAWS GOVERNING TOW TRUCKS AND THE TOW TRUCK LAW ENFORCEMENT ROTATION SYSTEM; ESTABLISHING CERTIFICATION REQUIREMENTS FOR TOW TRUCK OPERATORS TO QUALIFY FOR PARTICIPATION IN THE TOW TRUCK LAW ENFORCEMENT ROTATION SYSTEM; PROVIDING DEFINITIONS; IDENTIFYING MANUFACTURER'S BOOM RATINGS FOR TOW TRUCK CLASSIFICATION; REQUIRING THE ESTABLISHMENT OF THE TOW TRUCK COMPLAINT RESOLUTION COMMITTEE AND ASSIGNING RESPONSIBILITIES TO THE COMMITTEE; SPECIFYING THE AMOUNT OF INSURANCE A COMMERCIAL TOW TRUCK OPERATOR MUST CARRY; REQUIRING THAT PROOF OF INSURANCE BE SENT TO THE PUBLIC SERVICE COMMISSION; ESTABLISHING REQUIREMENTS FOR A TOW TRUCK OPERATOR'S FENCED LOT; ALLOWING THE HIGHWAY PATROL TO CHARGE A FEE FOR THE INSPECTION DECAL; SPECIFYING THE KIND OF INFORMATION THAT QUALIFIED TOW TRUCK OPERATORS MUST PROVIDE; ESTABLISHING THE PROCEDURE FOR MULTIPLE TOW TRUCK OPERATORS TO BE ON A ROTATION LIST FROM A SINGLE STORAGE OR IMPOUNDMENT FACILITY; ALLOWING ONLY ONE TOW TRUCK OPERATION FOR EACH OWNER TO BE PLACED ON A ROTATION LIST; ESTABLISHING REQUIREMENTS FOR SATELLITE TOW TRUCK OPERATIONS; REQUIRING LOCAL LAW ENFORCEMENT AGENCIES TO COMPLY WITH THE ROTATION SYSTEM PROVISIONS; REQUIRING THAT LISTS OF ROTATION SYSTEM CALLS BE MADE AVAILABLE; AND AMENDING SECTIONS 61-8-903, 61-8-904, 61-8-905, 61-8-906, 61-8-907, 61-8-908, 61-8-910, AND 69-12-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-903, MCA, is amended to read:

"61-8-903. Definitions. As used in this part, the following definitions apply:

(1) "Boom" means an engineered structure that is either mechanically or hydraulically operated and that is capable of lifting and supporting an overhead, vertical load.

~~(1)~~(2) "Commercial tow truck operator" or "operator" means a person, firm, or other entity that owns or operates a commercial tow truck as defined in 61-9-416.

~~(2)~~(3) "Department" means the department of justice provided for in 2-15-2001.

~~(3)~~(4) "Local government" means a county, a municipality, or other local board or body that has authority to enact laws relating to traffic.

~~(4)~~(5) (a) "Qualified tow truck operator" means a commercial tow truck operator:

~~(a)~~(i) that has equipment that:

~~(i)~~(A) meets the requirements of 61-8-906, 61-8-907, and 61-9-416; and

~~(ii)~~(B) has been classified in accordance with 61-8-905; ~~and~~

~~(b)~~(ii) that participates in the law enforcement rotation system provided for in 61-8-908; and

(iii) that meets the requirements of subsection (5)(b).

(b) (i) If the operator is a firm or other entity, at least 75% of the employees who operate a tow truck must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

(ii) If the operator is an individual, the individual must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

(6) "Rotation area" means the base area where a qualified tow truck operator is dispatched and operates. For class C tow truck operators, a rotation area includes at least the entire county in which the operation is located but may be expanded to other counties.

(7) "Satellite operation" means a second or subsequent operation in another rotation area."

Section 2. Section 61-8-904, MCA, is amended to read:

"61-8-904. Prohibition — exception. (1) A commercial tow truck operator may not operate for compensation upon the public roadways of this state unless the operator complies with the provisions of 61-8-906(1) and 61-8-907.

(2) A commercial tow truck operator may not participate in the law enforcement rotation system provided for in 61-8-908 unless the operator complies with the provisions of ~~61-8-905 through 61-8-907~~ this part.

(3) Sections 61-8-901 through 61-8-908 and 61-8-910 do not apply to a commercial tow truck operator that does not operate for compensation."

Section 3. Section 61-8-905, MCA, is amended to read:

"61-8-905. Classification standards. (1) Commercial tow trucks are divided into the following five classes based on the manufacturer's rating:

(a) Class A tow truck equipment must have a minimum manufacturer's boom or combined boom rating of 4 tons and must be mounted on a truck chassis with a minimum manufacturer's rating of 10,000 pounds gross vehicle weight.

(b) Class B tow truck equipment must have a minimum manufacturer's boom or combined boom rating of 8 tons and must be mounted on a truck chassis with a minimum manufacturer's rating of 18,000 pounds gross vehicle weight.

(c) Class C tow truck equipment must have a minimum manufacturer's boom or combined boom rating of 16 tons and must be mounted on a chassis that has a minimum manufacturer's rating of 32,000 pounds gross vehicle weight.

(d) Class D ~~is class A, B, or C~~ tow truck equipment ~~that~~ includes manufactured rollbacks and car carriers with manufacturer's gross vehicle ratings ~~ranging from~~ of 10,000 pounds ~~to 30,000 pounds~~ and over. The rollbacks and car carriers must be mounted on a truck-trailer chassis that, at a minimum, is equal to the minimum gross weight of the rollback or car carrier. Class D also includes any piece of towing equipment without a boom.

(e) Class E includes two or more tow trucks working together with a combined manufacturer's rating of a minimum of 80,000 pounds with access to supportive equipment, such as forklifts, banders, and air bags, for the recovery

of rollovers and wrecked, disabled, and abandoned vehicles whose cargo requires special handling. Class E refers to tow truck companies and not to tow truck equipment.

(2) ~~(a)~~ An operator of noncommercially manufactured or modified tow truck equipment in use on October 1, 1995, that wishes to participate in the law enforcement rotation system must have its equipment classified by the department within a time period set by the department. Once the equipment is classified, further modifications may not be made.

~~(b) (i) The department shall establish a committee composed of members selected from the:~~

~~(A) tow truck industry;~~

~~(B) the motor carrier services division of the department of transportation; and~~

~~(C) the highway patrol.~~

~~(ii) The committee is responsible for hearing disputes that may arise regarding the classification of noncommercially manufactured or modified tow truck equipment.~~

~~(iii) The department shall establish by rule a procedure for hearing a dispute.~~

~~(c) After October 1, 1995, an~~

(3) An operator of new noncommercially manufactured or modified tow truck equipment must have its equipment independently certified before participating in the law enforcement rotation system. *Once the equipment is classified, further modifications to the equipment must be recertified.*

Section 4. Tow truck complaint resolution committee — membership — responsibilities. (1) The department shall establish a tow truck complaint resolution committee, and the attorney general shall appoint the members. Committee members serve 3-year terms, may serve more than one term, and must include:

(a) two representatives of the tow truck industry, one from the eastern half of the state and one from the western half of the state;

(b) a representative of the commercial motor carrier industry;

(c) a member of the public;

(d) a representative of the insurance industry; and

(e) a representative of the highway patrol.

(2) The committee shall meet as often as necessary, either in person or by teleconference, to review and resolve complaints about tow truck issues, including towing charges, that are submitted in writing to a committee member and to review information submitted to it as provided in this part.

(3) The department shall establish rules to govern the committee's procedure for reviewing and resolving complaints.

Section 5. Section 61-8-906, MCA, is amended to read:

“61-8-906. Liability insurance — storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:

(a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, as defined in 61-9-416, or occurring on the business premises of a commercial tow truck operator in an amount not less than:

- (i) \$300,000 for class A tow trucks;
- (ii) \$500,000 for class B tow trucks; and
- (iii) \$750,000 for class C tow trucks;

(b) insurance *in an amount not less than \$20,000* to cover the damage to cargo or other property entrusted to the care of the commercial tow truck operator; and

(c) garage keepers or on-hook legal liability insurance *in an amount not less than \$50,000*.

(2) A commercial tow truck operator shall provide proof of the insurance required in subsection (1) to the public service commission.

~~(2)~~(3) A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:

- (a) adequate for the secure storage and safekeeping of stored vehicles;
- (b) located in a place that is reasonably convenient for public access;
- (c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays; ~~and~~
- (d) large enough to store all the vehicles towed for law enforcement agencies; and

(e) *if a fenced lot, constructed of chain link at least 6 feet high or constructed of materials and in a manner sufficient to deter trespassing or vandalism.*"

Section 6. Section 61-8-907, MCA, is amended to read:

"61-8-907. Inspection — fees — decal. (1) The tow truck equipment of a commercial tow truck operator must have an annual safety inspection. A highway patrol officer, an employee of the department of transportation appointed as a peace officer in accordance with 61-12-201, or an inspector certified by the department shall conduct the inspection and require the commercial tow truck operator to provide proof of compliance with the provisions of 61-8-906.

(2) (a) Upon satisfactory completion of the inspection and verification of the insurance requirements, a decal showing the last inspection date and the expiration date of the insurance coverage must be affixed in a prominent place on the tow truck.

(b) If the commercial tow truck operator is participating in the law enforcement rotation system, the decal must also show the classification of the operator's tow truck equipment.

(3) The department may establish ~~an~~ inspection *and decal fee fees* that may not exceed the actual costs of the inspection *and the decal*. The fees *for the inspection and decal* must be deposited in the state highway account in the state special revenue fund."

Section 7. Section 61-8-908, MCA, is amended to read:

"61-8-908. State law enforcement rotation system — local government rotation system. (1) The department shall establish *and*

maintain an equitable rotation system among qualified tow truck operators that apply to the department in writing to be placed on the system. The rotation system:

(a) must be administered by the highway patrol in a manner that will give priority to public safety;

(b) must be based on the classification of equipment as provided in 61-8-905; and

(c) may include only qualified tow truck operators.

(2) *Each qualified tow truck operator participating in the rotation system shall have available and show upon the request of a law enforcement officer:*

(a) *all Montana motor vehicle identification numbers or department of transportation numbers for the operator's tow trucks operating in the rotation system;*

(b) *the operator's federal tax identification number; and*

(c) *the operator's company phone number and street address.*

(3) (a) *If more than one qualified tow truck operator using a single storage or impoundment facility applies to be placed on the rotation system, the operators shall provide to the complaint resolution committee established in [section 4] information regarding each operator's individual accounting system, the information required in subsection (2), and proof that each operator has the insurance required in 61-8-906.*

(b) *Based on the information provided to it pursuant to subsection (3)(a), the complaint resolution committee shall, upon written request, verify that operators using a single storage or impoundment facility applying to be placed on the rotation system have individual accounting systems, adequate identification information, and individual insurance policies.*

(4) *Only one qualified tow truck operation for each owner may be included on a rotation area list.*

(5) (a) *An owner of a qualified tow truck operation who has an existing tow truck operation in a rotation area separate from the rotation area where the owner is participating in the rotation system may establish a satellite operation to be included on a rotation area list if:*

(i) *the owner has a business office in the second rotation area;*

(ii) *the business office is open and accessible from 8 a.m. to 5 p.m. Monday through Friday;*

(iii) *the facilities have a secure yard as provided in 61-8-906(3)(e); and*

(iv) *the tow truck operation has a local 24-hour phone number.*

(b) *Any charges for towing service from the satellite operation must be calculated from the satellite operation area and not the area of the owner's base operation.*

~~(2)(6)~~ (6) *The rotation system is not applicable when the owner or driver of a wrecked or disabled vehicle obstructing a public roadway requests a tow truck operator of the owner's or driver's choice and the operator meets the insurance requirements provided in 61-8-906 and the safety inspection requirements provided in 61-8-907.*

~~(3)(7)~~ (7) (a) (i) *The law enforcement officer at the scene of the wreck shall call the qualified tow truck operator that is next on the rotation list if:*

- (A) a request for a tow truck is not made by the owner or driver;
- (B) the requested tow truck cannot respond in a timely manner; or
- (C) the law enforcement officer determines that the requested tow truck is unable to handle the wrecked or disabled vehicle.

(ii) If the qualified tow truck operator is not classified to handle the wrecked or disabled vehicle, the officer shall call the qualified tow truck operator next on the rotation list that is classified to handle the wrecked or disabled vehicle.

(b) If a qualified tow truck operator classified to handle the wrecked or disabled vehicle is not reasonably available, the law enforcement officer may request other equipment to remove the hazard.

~~(4)~~(8) The department shall administer the state law enforcement rotation system. A qualified tow truck operator may examine the rotation system schedule established by the department in order to determine if the system is being administered in an equitable manner.

~~(5)~~(9) A qualified tow truck operator gives implied consent to a reasonable inspection during normal business hours of its premises, vehicles, and equipment by the department of transportation, highway patrol, or a local government to ensure compliance with ~~61-8-905 through 61-8-907~~ *this part*.

~~(6)~~(10) A local law enforcement agency may adopt and administer a local law enforcement rotation system *that complies with the provisions of this part*. A tow truck operator desiring to be placed on the local law enforcement rotation system must be a qualified tow truck operator as provided in this part.

(11) *The highway patrol or local law enforcement shall provide upon request a record of rotation system calls for all classes of tow trucks.*

(12) *Complaints about the rotation system must be referred in writing to the complaint resolution committee established in [section 4].*"

Section 8. Section 61-8-910, MCA, is amended to read:

"61-8-910. Violation — penalty. A commercial tow truck operator that violates a provision of ~~61-8-906 or 61-8-907~~ *this part* is guilty of a misdemeanor and is subject to the penalty provided in 61-8-711."

Section 9. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities that are sponsored or supervised by school authorities;

(b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village, as determined by the commission;

- (d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;
- (e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;
- (f) ambulances;
- (g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;
- (h) the operation of:
 - (i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2; or
 - (ii) municipal bus service pursuant to Title 7, chapter 14, part 44;
- (i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;
- (j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government; or
- (k) the transportation of disabled or elderly persons provided by private, nonprofit organizations. As used in this subsection:
 - (i) "disabled" means an individual who has a physical or mental impairment that substantially limits one or more major life activities;
 - (ii) "elderly" means a person 60 years of age or older; and
 - (iii) "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) ~~This~~ *Except for the identification of ownership requirements provided in 69-12-408, this chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles. However, commercial tow truck firms shall file policies of insurance showing coverage required by 61-8-906.*

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Section 10. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 61, chapter 8, part 9, and the provisions of Title 61, chapter 8, part 9, apply to [section 4].

Approved March 20, 2003

CHAPTER NO. 89

[SB 51]

AN ACT AUTHORIZING THE BOARD OF HOUSING TO INCREASE THE TOTAL AMOUNT OF ITS OUTSTANDING NOTES AND BONDS FROM \$975 MILLION TO \$1.5 BILLION; PROVIDING FOR SEMIANNUAL INSTALLMENT PAYMENTS ON SERIAL BONDS; AND AMENDING SECTION 90-6-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-111, MCA, is amended to read:

"90-6-111. Bonds and notes. (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount ~~as~~ *that* the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 90-6-119, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and, whenever it ~~deems~~ *considers* refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds ~~shall~~ *must* be obligations of the board payable out of any ~~revenues revenue~~, assets, or ~~moneys money~~ of the board, subject only to agreements with the holders of particular notes or bonds pledging particular ~~revenues revenue~~, assets, or ~~moneys money~~.

(4) The notes and bonds ~~shall~~ *must* be authorized by resolutions of the board, ~~shall~~ *must* bear a date, and ~~shall~~ *must* mature at times ~~as that~~ the resolutions provide. A note ~~shall~~ *may* not mature more than 10 years and a bond ~~shall~~ *may* not mature more than 50 years from the date of its issue. The bonds may be issued as serial bonds payable in annual *or semiannual* installments or as term bonds or as a combination ~~thereof~~ *of both*. The notes and bonds ~~shall~~ *must* bear interest at a rate or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places within or without the state, and be subject to terms of redemption as provided in resolutions. The board shall designate whether interest payments on the bonds are taxable or tax exempt. The notes and bonds of the board may be sold at public or private sale at ~~such~~ prices, which may be above or below par, ~~as are~~ determined by the board.

(5) The total amount of notes and bonds outstanding at any time, except notes or bonds as to which the board's obligation has been satisfied and discharged by refunding or for which reserve for payment or other means of payment have been otherwise provided, may not exceed ~~\$975 million~~ *\$1.5 billion*. The issue price of bonds sold at a discount, not the face amount of the bonds, counts against this statutory ceiling."

Approved March 20, 2003

CHAPTER NO. 90

[SB 69]

AN ACT AMENDING THE LEGISLATIVE MEMBERSHIP REQUIREMENT FOR THE DRINKING WATER STATE REVOLVING FUND ADVISORY COMMITTEE; AND AMENDING SECTION 75-6-231, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6-231, MCA, is amended to read:

“75-6-231. Intended use plan — advisory committee. (1) The department shall prepare an annual intended use plan for the state that meets the requirements of section 300j-12(b) of the federal act (42 U.S.C. 300j-12(b)).

(2) The intended use plan must include:

(a) a list of projects in the state that are eligible for assistance, including both the priority assigned to each project based on public health needs and on the financial needs of the project and, to the extent known, the expected funding schedule for each project; and

(b) a description of the funds to be allocated to activities under 75-6-212 and 75-6-221(2) and funds to be transferred to or received by the water pollution control state revolving fund, as allowed in 75-6-211(5), for the annual fiscal period following publication of the intended use plan.

(3) Before finalizing an intended use plan, the department shall prepare a draft document containing the information required in subsection (2) and shall provide public notice and opportunity to comment on the draft document.

(4) (a) Following the public comment period provided for in subsection (3) and any department modifications to the intended use plan resulting from the public comment, a summary of the public comment and the intended use plan must be presented for review, comment, and recommendations to an advisory committee formed by the department and consisting of six individuals from the following entities appointed by their respective presiding officers, directors, or executive officials:

(i) one member from the Montana league of cities and towns;

(ii) one member from the Montana association of counties;

(iii) one member from the department of natural resources and conservation;

(iv) one member from the department of environmental quality; and

(v) two members from the ~~joint legislative subcommittee on natural resources~~ legislature. One member must be from the house of representatives and one from the senate, and they may not represent the same political party.

(b) The advisory committee is attached to the department for administrative purposes only.

(5) The department shall address in writing any comments and recommendations provided by the advisory committee provided for in subsection (4) before finalizing an intended use plan and prior to awarding any contracts under 75-6-212(1)(g).”

Approved March 20, 2003

CHAPTER NO. 91

[HB 411]

AN ACT PROVIDING FOR THE TRANSFER OF RIVER-USE DAYS TO THE NEW OWNER OF A FISHING OUTFITTER BUSINESS; AMENDING SECTION 37-47-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-47-310, MCA, is amended to read:

“37-47-310. Transfer or amendment of outfitter’s license — transfer of river-use days to new owner of fishing outfitter business. (1) An outfitter’s license may not be transferred during any license year.

(2) An individual person may, upon proper showing, have that person’s outfitter’s license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, an immediate member of the family of a deceased licensed outfitter may continue to outfit for the deceased outfitter’s unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure of the business.

(4) *When a fishing outfitter’s business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter’s historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter’s business. Upon the sale or transfer of a fishing outfitter’s business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, wildlife, and parks commission and that no property right attaches to the transferred river-use days.”*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2003

CHAPTER NO. 92

[HB 471]

AN ACT EXPANDING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION AND THE CHIEF INFORMATION OFFICER REGARDING OVERSIGHT OF INFORMATION TECHNOLOGY PURCHASES; SETTING RESTRICTIONS ON STATE FINANCING OF INFORMATION TECHNOLOGY PURCHASES; ALLOWING BONDS TO BE USED ON A LIMITED BASIS FOR INFORMATION TECHNOLOGY PURCHASES; AMENDING SECTION 2-17-512, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-512, MCA, is amended to read:

“2-17-512. Powers and duties of department. (1) The department is responsible for carrying out the planning and program responsibilities for information technology for state government. The department:

(a) shall encourage and foster the development of new and innovative information technology within state government;

(b) shall promote, coordinate, and approve the development and sharing of shared information technology application software, management systems, and information that provide similar functions for multiple state agencies;

(c) shall cooperate with the department of commerce to promote economic development initiatives based on information technology;

(d) shall establish and enforce a state strategic information technology plan as provided for in 2-17-521;

(e) shall establish and enforce statewide information technology policies and standards;

(f) shall review and approve state agency information technology plans provided for in 2-17-523;

(g) shall coordinate with the office of budget and program planning to evaluate budget requests that include information technology resources. The department shall make recommendations to the office of budget and program planning for the approval or disapproval of information technology budget requests, *including an estimate of the useful life of the asset proposed for purchase and whether the amount should be expensed or capitalized, based on state accounting policy established by the department.* An unfavorable recommendation must be based on a determination that the request is not provided for in the approved agency information technology plan provided for in 2-17-523.

(h) shall staff the information technology board provided for in 2-15-1021;

(i) shall fund the administrative costs of the information technology board provided for in 2-15-1021;

(j) shall review the use of information technology resources for all state agencies;

(k) shall review and approve state agency specifications and procurement methods for the acquisition of information technology resources;

(l) shall review, approve, and sign all state agency contracts and shall review and approve other formal agreements for information technology resources provided by the private sector and other government entities;

(m) shall operate and maintain a central computer center for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(n) shall operate and maintain a statewide telecommunications network for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(o) shall ensure that the statewide telecommunications network is properly maintained. The department may establish a centralized maintenance program for the statewide telecommunications network.

(p) shall coordinate public safety communications on behalf of all state agencies as provided for in 2-17-541 through 2-17-543;

(q) shall manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;

(r) shall provide electronic access to information and services of the state as provided for in 2-17-532;

(s) shall provide assistance to the legislature, the judiciary, the governor, and state agencies relative to state and interstate information technology matters;

(t) shall establish rates and other charges for services provided by the department;

(u) must accept federal funds granted by congress or by executive order and gifts, grants, and donations for any purpose of this section;

(v) shall dispose of personal property owned by it in a manner provided by law when, in the judgment of the department, the disposal best promotes the purposes for which the department is established;

(w) shall implement this part and all other laws for the use of information technology in state government;

(x) shall report to the appropriate interim committee on a regular basis and to the legislature as provided in 5-11-210 on the information technology activities of the department; and

(y) shall represent the state with public and private entities on matters of information technology.

(2) If it is in the state's best interest, the department may contract with qualified private organizations, foundations, or individuals to carry out the purposes of this section.

(3) The director of the department shall appoint the chief information officer to assist in carrying out the department's information technology duties."

Section 2. Limitations on general obligation bonds and bond anticipation notes. (1) Bonds and bond anticipation notes may not be issued for information technology acquisitions, including hardware or software, for a period longer than the estimated useful life of the asset.

(2) The chief information officer, as defined in 2-17-506, shall estimate the useful life of the asset for the proposed information technology purchase and provide this information for inclusion prior to the department determining the appropriate financing method, as described in 2-17-512(1)(g).

(3) Whenever the department determines that the purchase of information technology hardware or software must be expensed in accordance with state accounting policy, general obligation bonds may not be issued for the purchase.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 17, chapter 5, part 8, and the provisions of Title 17, chapter 5, part 8, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 2003.

Approved March 24, 2003

CHAPTER NO. 93

[HB 49]

AN ACT REVISING LAWS RELATING TO PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES; DEFINING "SPA" AND "TOURIST HOME" AND CLARIFYING THE DEFINITION OF "PUBLIC SWIMMING POOL"; EXEMPTING TOURIST HOMES THAT HAVE SPA FACILITIES FROM THE REQUIREMENT OF HAVING PERSONS TRAINED IN CARDIOPULMONARY RESUSCITATION ON THE PREMISES; ELIMINATING THE EXEMPTION FOR THE STATE AND ITS POLITICAL SUBDIVISIONS TO OBTAIN LICENSES TO OPERATE PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES; PROVIDING FOR COOPERATIVE AGREEMENTS BETWEEN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND OTHER AGENCIES THAT OPERATE SWIMMING POOLS OR PUBLIC BATHING PLACES; AND

AMENDING SECTIONS 50-53-102, 50-53-107, 50-53-201, AND 50-53-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-53-102, MCA, is amended to read:

“50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Department” means the department of public health and human services provided for in 2-15-2201.

(2) “Local board of health” or “board” means a local board as defined in 50-2-101.

(3) “Local health officer” or “officer” means a local health officer as defined in 50-2-101.

(4) “Person” means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(5) “Public bathing place” means a body of water with bathhouses and related appurtenances operated for the public.

(6) “Public swimming pool” means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools *and spas*. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of the owner’s family, or their invited guests; or

(b) medicinal hot water baths for individual use.

(7) “Spa” means an artificial pool designed for recreational bathing or therapeutic use and that is not drained, cleaned, or refilled for individual use. A spa includes but is not limited to a therapeutic pool, hydrotherapy pool, whirlpool, hot tub, or jacuzzi-type whirlpool bath.

(8) “Tourist home” means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.”

Section 2. Section 50-53-107, MCA, is amended to read:

“50-53-107. Pool operation to be sanitary, healthful, and safe — when lifeguard not required. (1) Public swimming pools and public bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, ~~shall~~ *must* be sanitary, healthful, and safe.

(2) A lifeguard is not required for a privately owned public swimming pool if:

(a) a sign is prominently displayed on the swimming pool premises with the words “No lifeguard is on duty” or words of substantially the same meaning; and

(b) one individual per shift is on the premises, accessible to the pool, and currently certified as competent in cardiopulmonary resuscitation by either the American red cross or the American heart association.

(3) *Tourist homes providing spa facilities to their guests shall prominently display a sign on the spa premises with the words “No lifeguard is on duty” or*

words of substantially the same meaning. Tourist homes providing spa facilities to their guests are exempt from the requirements of subsection (2)(b)."

Section 3. Section 50-53-201, MCA, is amended to read:

"50-53-201. License required—exemption—validation. (1) ~~Except as provided in subsection (3), a~~ A person may not operate a public swimming pool or public bathing place without annually obtaining a license from the department.

(2) A separate license is required for each public swimming pool or public bathing place unless more than one public swimming pool is operated on the same premises by the same person, in which case a single license is required for all public swimming pools on the premises.

~~(3) The state or a political subdivision of the state owning or operating a public swimming pool or public bathing place is not required to obtain a license under subsection (1) but is required to comply with the health and safety requirements in part 1, this part, and department rules.~~

~~(4)~~(3) A license issued by the department is not valid unless signed in accordance with 50-53-206 or in accordance with 50-53-207, in the case of an appeal."

Section 4. Section 50-53-209, MCA, is amended to read:

"50-53-209. Cooperative agreements—inspections. (1) The department may enter into cooperative agreements with local boards of health to authorize those boards to act as agents of the department and to conduct inspections of and enforce applicable statutes and department rules relating to public swimming pools and public bathing places within the jurisdictions of the respective boards.

(2) The department or a local board of health, pursuant to a cooperative agreement, shall annually conduct:

(a) at least one full facility inspection and one critical point inspection of each public swimming pool or public bathing place operated throughout the year; and

(b) at least one full facility inspection of each seasonal public swimming pool or public bathing place.

(3) *The department shall enter into cooperative agreements with the department of fish, wildlife, and parks and other state agencies that operate public swimming pools or public bathing places to address the enforcement of this chapter and rules adopted under this chapter."*

Approved March 24, 2003

CHAPTER NO. 94

[HB 72]

AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; CLARIFYING THE FEDERAL EXEMPTION FROM THE TERM "EMPLOYMENT"; REMOVING THE TIME LIMITATIONS FOR EXPENDITURES OF FUNDS RECEIVED PURSUANT TO SECTIONS 903 AND 904 OF THE SOCIAL SECURITY ACT FOR ADMINISTRATIVE EXPENSES; PROVIDING THAT CERTAIN INDIVIDUALS CALLED TO ACTIVE MILITARY DUTY MAY NOT BE DISQUALIFIED FOR

UNEMPLOYMENT BENEFITS; PROVIDING THAT THE EDUCATION REQUIREMENT TO REQUALIFY FOR UNEMPLOYMENT BENEFITS RUNS FROM THE DATE OF THE ACT THAT CAUSED DISQUALIFICATION RATHER THAN THE DATE OF ENROLLMENT; AMENDING SECTIONS 39-51-204, 39-51-404, AND 39-51-2302, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-204, MCA, is amended to read:

“39-51-204. Exclusions from definition of employment. (1) The term “employment” does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor’s spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) “freelance correspondent” is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) (A) “newspaper carrier” means a person who provides a newspaper with the service of delivering newspapers singly or in bundles.

(B) The term does not include an employee of the paper who, incidentally to the employee’s main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers’ compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

- (B) receives payment for service from individual clientele; and
- (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and
- (iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection.
- (f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.
- (g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;
- (h) service performed for the installation of floor coverings if the installer:
 - (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
 - (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
 - (iii) may perform service for anyone without limitation;
 - (iv) may accept or reject any job;
 - (v) furnishes substantially all tools and equipment necessary to provide the service; and
 - (vi) works under a written contract that:
 - (A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;
 - (B) states that the installer is not covered by unemployment insurance; and
 - (C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;
- (i) service performed as a direct seller as defined by 26 U.S.C. 3508;
- (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:
 - (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;
 - (ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and
 - (iii) performs all services as an independent contractor pursuant to a written contract.
- (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(e)(7)(c)(6) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act; or

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 2. Section 39-51-404, MCA, is amended to read:

"39-51-404. Administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

(a) specifies the purposes for which the money is appropriated and the amounts appropriated; *and*

~~(b) limits the period within which the money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and~~

~~(c)~~(b) limits the amount that may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount not exceeding the amount by which the aggregate of the amounts credited to the account of this state pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of the 35 12-month periods.

(2) For the purposes of this section, amounts used during any 12-month period must be charged against equivalent amounts that were first credited and that are not already charged, except that an amount used for administration

during any 12-month period may not be charged against any amount credited during a 12-month period earlier than the 34th preceding period. Money requisitioned for the payment of expenses of administration pursuant to this section must be deposited in the unemployment insurance administration account but, until expended, must remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited. If any money deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating the money, it must be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) An assessment equal to 0.13% of all taxable wages provided for in 39-51-1108 and 0.05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers. All assessments and investment income must be deposited in the employment security account provided for in 39-51-409."

Section 3. Section 39-51-2302, MCA, is amended to read:

"39-51-2302. Disqualification for leaving work without good cause.

(1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.

(2) The individual may not be disqualified if the individual leaves:

(a) employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing ~~physician~~ *physician* and, after recovering from the illness or injury when recovery is certified by a licensed and practicing ~~physician~~ *physician*, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible; ~~or~~

(b) temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons; *or*

(c) *employment because of being called to active military duty to serve in the United States armed forces for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has terminated due to the active military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the employer's account.*

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the ~~individual's enrollment~~ *act that caused the disqualification*. The services must constitute employment as defined in 39-51-203 and 39-51-204."

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective July 1, 2003.

Section 6. Applicability. [This act] applies to claims for benefits filed on or after July 1, 2003.

Approved March 24, 2003

CHAPTER NO. 95

[HB 117]

AN ACT GENERALLY CLARIFYING THE UNEMPLOYMENT INSURANCE TAX LAWS; CLARIFYING THAT THE DEPARTMENT OF REVENUE MAY ISSUE SUMMONS PENALTIES FOR FAILURE OF AN EMPLOYER TO SUBMIT WAGE INFORMATION OR PAY WITHHOLDING TAXES ON TIME; CLARIFYING THE DETERMINATION OF PENALTIES AND INTEREST FOR FAILURE OF AN EMPLOYER TO FILE UNEMPLOYMENT INSURANCE REPORTS OR MAKE PAYMENTS; AMENDING SECTIONS 15-30-209, 39-51-1206, AND 39-51-1301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-209, MCA, is amended to read:

“15-30-209. Violations by employer — penalties, interest, and remedies. (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

(2) The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.

(3) A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior to the issuance of a notice of delinquent report.

(4) A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.

(5) (a) A ~~subpoena~~ *summons* penalty of \$50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a ~~subpoena~~ *summons* pursuant to ~~15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703~~ 15-1-301.

(b) If an employer fails to honor the ~~subpoena~~ *summons* provided in subsection (5)(a), an additional \$100 penalty must be added to the liability.

(6) In addition to any other penalty provided by law, the failure of an employer to furnish a wage and tax statement as required by 15-30-207(1) subjects the employer to a penalty of \$5 for each failure with a minimum of \$50.

(7) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.

(8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

(9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.

(10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9) is subject to the penalties imposed by 15-30-321(1) if any part of the affidavit is untrue. The department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil penalty and any delinquent taxes.

(11) All of the remedies available to the state for the administration, enforcement, and collection of income taxes are available and apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."

Section 2. Section 39-51-1206, MCA, is amended to read:

"39-51-1206. Department to provide for notification of employers of their classification and contribution rate. (1) The department shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. ~~Such~~ *Except as provided in subsection (2), the notification shall be final for all purposes unless and until such the employer files a written request with the department for a redetermination or hearing thereon on the classification and rate of contribution within 30 days after receipt of such the notice.*

(2) *The department may make changes in classification and rate of contribution upon an oral request for redetermination from the employer if the department finds that the department has made an error.*"

Section 3. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due reports and taxes. (1) Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided by ~~45-1-216~~ *15-30-209.*

(2) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations are distributed as provided in 15-30-250 and must be deposited in that account. Money deposited in that account and appropriated to the department or transferred by the department to its delegate, pursuant to 39-51-301(5), may only be used by the department or its delegate to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that

federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

(3) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose.”

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2003

CHAPTER NO. 96

[HB 166]

AN ACT CLARIFYING THAT A PLEA OF GUILTY OR NOLO CONTENDERE MUST BE ACCEPTED UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 46-16-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in *State v. Peplow*, 2001 MT 253, 307 Mont. 172, 36 P.3d 922 (2001), the Montana Supreme Court held that in section 46-16-105, MCA, when the term “may” is used to confer power on an officer, court, or tribunal and the public or a third person has an interest in the exercise of the power, then the exercise of the power becomes imperative.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-16-105, MCA, is amended to read:

“46-16-105. Plea of guilty — use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere ~~may~~ *must* be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) At any time before or after judgment, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2003

CHAPTER NO. 97

[HB 325]

AN ACT INCREASING THE MAXIMUM INSURANCE COVERAGE FOR STATE BOARD OF HAIL INSURANCE POLICIES; AMENDING SECTIONS 80-2-208 AND 80-2-244, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-2-208, MCA, is amended to read:

“80-2-208. Maximum insurance. When the reserve fund is determined actuarially sound, as provided in 80-2-228, the board may write not more than ~~24~~ \$40 insurance on each acre of grain ~~which~~ that is on nonirrigated land and not more than ~~48~~ \$56 per on each acre on irrigated land. When more than one party desires hail insurance on the same crop, each party is entitled to the share of the maximum provided ~~per~~ on each acre as represented by ~~his~~ that person’s interest in the crop. Either party may insure ~~his~~ the party’s share in the crop for any amount up to and including the maximum ~~per~~ on each acre if the others waive their right to insure.”

Section 2. Section 80-2-244, MCA, is amended to read:

“80-2-244. Payment of losses. (1) The board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the loss in the following manner. From the amount of the loss as adjusted for each claimant, the board shall deduct the amount that the claimant then owes as a delinquent hail insurance fee and the maximum amount assessed as a hail insurance fee for the current year.

(2) The board shall on or before November 1 order payment for the amount deducted. The payment must be remitted to the county treasurer of the county in which the fee was imposed. The board shall then order payment for the balance of the adjustment to be sent to the claimant, provided that the payment for loss may not exceed ~~24 per acre for grain crops on nonirrigated lands or 48 per acre on irrigated lands~~ the maximum amounts established in 80-2-208. A claimant may not receive payment for any loss incurred if the loss does not equal or exceed 5% of the total value of the crop insured. If the losses in any year exceed the current fees plus the reserve, then the payment of all losses must be prorated among all grain growers having loss claims adjusted and approved, and the unpaid balance of the losses must be paid out of the reserve without interest in the order that the board directs, when in the judgment of the board there is sufficient money to provide for the payment of the claims and other items payable out of the reserve. In any year the board may by resolution authorize its presiding officer and secretary to borrow money that the board may consider necessary for the purpose of paying all warrants as issued.

(3) For any money borrowed under the provisions of this part, the board shall cause warrants to be drawn. The warrants must bear interest at a rate not to exceed 6% a year, and the warrants and the interest on the warrants must be paid out of funds from the state hail insurance program as they are collected from the various counties in the state. The board may not at any time borrow a total sum greater than the amount of the fees imposed for the current year together with delinquent fees that remain unpaid on the books of the county treasurer.”

Section 3. Effective date. [This act] is effective on passage and approval.
Approved March 24, 2003

CHAPTER NO. 98

[HB 378]

AN ACT AMENDING THE DEFINITION OF "NATIVE PLANT"; AND AMENDING SECTIONS 7-22-2101 AND 80-7-701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2101, MCA, is amended to read:

"7-22-2101. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

- (1) "Board" means a district weed board created under 7-22-2103.
- (2) "Commissioners" means the board of county commissioners.
- (3) "Coordinator" means the person employed by the board to conduct the district noxious weed management program and supervise other district employees.
- (4) "Department" means the department of agriculture provided for in 2-15-3001.
- (5) "District" means a weed management district organized under 7-22-2102.
- (6) "Native plant" means a plant ~~endemic to the state of Montana~~ *indigenous to the state of Montana*.
- (7) "Native plant community" means an assemblage of native plants occurring in a natural habitat.
- (8) (a) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:
 - (i) as a statewide noxious weed by rule of the department; or
 - (ii) as a district noxious weed by a board, following public notice of intent and a public hearing.(b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state.
- (9) "Person" means an individual, partnership, corporation, association, or state or local government agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, barrow pit, or right-of-way for a canal or lateral.
- (10) "Weed management" or "control" means the planning and implementation of a coordinated program for the containment, suppression, and, where possible, eradication of noxious weeds."

Section 2. Section 80-7-701, MCA, is amended to read:

“80-7-701. Regulation of importation or sale of noxious weeds. (1) As used in this section:

(a) “native plant” means a plant ~~endemic to the state of Montana~~ *indigenous to the state of Montana*; and

(b) “native plant community” means an assemblage of native plants occurring in a natural habitat.

(2) The department may regulate or prohibit the importation or sale of grain, plants, seed, tubers, nursery stock, fruit, or other materials containing noxious weed seed or plants harmful to Montana’s horticultural, agricultural, forestry, livestock, wildlife, or native plant communities.”

Approved March 24, 2003

CHAPTER NO. 99

[HB 427]

AN ACT REVISING LAWS RELATING TO AIR QUALITY; CLARIFYING CERTAIN AIR QUALITY PERMIT APPLICATIONS THAT ARE SUBJECT TO DEPARTMENT OF ENVIRONMENTAL QUALITY ACTION WITHIN 60 DAYS AFTER THE DEPARTMENT’S RECEIPT OF THE APPLICATION; PROVIDING THAT THE DEPARTMENT HAS 75 DAYS FROM THE RECEIPT OF CERTAIN AIR QUALITY PERMIT APPLICATIONS TO TAKE ACTION; REQUIRING THAT THE DEPARTMENT PREPARE A SINGLE ENVIRONMENTAL REVIEW FOR CERTAIN PERMIT APPLICATIONS; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT A RULE THAT PROVIDES FOR A 30-DAY PUBLIC COMMENT PERIOD ON CERTAIN PERMIT APPLICATIONS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-211, MCA, is amended to read:

“75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b), not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, *is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661*, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. ~~The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.~~

(c) *If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.*

(d) *Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).*

~~(e)~~(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall *prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the permit application applications* within the time period provided for in 75-2-215(3)(e).

(f) *The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.*

~~(g)~~(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective

date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written notice that its application is considered filed pursuant to subsection (8) may:

(i) for a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.

(ii) for a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.

(b) The construction or operation of a temporary power generation unit or units described in subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units continues after a department decision to deny the permit application becomes final as provided in this section.

(c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the department's deadline any additional information that is necessary to process the permit application.

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued.

(13) *The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:*

(a) *are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;*

(b) *are subject to the requirements of 75-2-215; or*

(c) *require the preparation of an environmental impact statement.* (Terminates July 1, 2005—sec. 4, Ch. 588, L. 2001.)

75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b), not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, *is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661*, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. ~~The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.~~

(c) *If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.*

(d) *Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).*

~~(e)~~(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall *prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the permit application* applications within the time period provided for in 75-2-215(3)(e).

(f) *The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.*

~~(d)~~(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for

hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(12) *The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:*

(a) *are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;*

(b) *are subject to the requirements of 75-2-215; or*

(c) *require the preparation of an environmental impact statement."*

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2003

CHAPTER NO. 100

[HB 450]

AN ACT INCREASING CERTAIN FEES FOR THE CLERK OF DISTRICT COURT; AMENDING SECTION 25-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, \$160; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) (i) *except as provided in subsection (1)(d)(ii)*, for preparing copies of papers on file in the clerk's office, ~~50 cents~~ \$1 a page for the first ~~five~~ 10 pages of each file, for each request, and ~~25~~ 50 cents for each additional page;

(ii) *for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;*

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, ~~50 cents~~ \$2 for each name for each year searched, ~~not to exceed a total of \$25~~ for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, ~~\$30~~ \$30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, \$30;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75.

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must:

(a) prior to July 1, 2003, be forwarded to the department of revenue for deposit in the state general fund; and

(b) after June 30, 2003, be deposited in the state general fund as specified by the supreme court administrator.

(3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's trust fund account established in 52-7-102, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(5) Through June 30, 2003, the clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(q).

(6) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

(7) The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist,

the fees must be deposited in the county general fund for district court operations.

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund.”

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved March 24, 2003

CHAPTER NO. 101

[HB 542]

AN ACT REVISING THE DEFINITION OF “OCCUPATIONAL THERAPY” BY MODIFYING THE DESCRIPTION OF THE TYPE OF INDIVIDUAL FOR WHOM OCCUPATIONAL THERAPY IS INTENDED AND BY MODIFYING THE TYPE OF INTERVENTIONS THAT ARE COVERED BY THE DEFINITION OF OCCUPATIONAL THERAPY; DEFINING “TOPICAL MEDICATIONS”; REVISING OCCUPATIONAL THERAPY TECHNIQUES INVOLVING SOUND OR ELECTRICAL PHYSICAL AGENT MODALITY DEVICES AND THE EDUCATIONAL REQUIREMENTS FOR THE USE OF THE TECHNIQUES; PROVIDING FOR THE APPLICATION AND ADMINISTRATION OF TOPICAL MEDICATIONS; PROVIDING FOR THE ADOPTION OF PROTOCOLS WITH RESPECT TO TOPICAL MEDICATIONS; AND AMENDING SECTIONS 37-24-103 AND 37-24-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-24-103, MCA, is amended to read:

“37-24-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Board” means the board of occupational therapy practice established by 2-15-1749.

(2) “Certified occupational therapy assistant” means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of ~~the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association~~ *the national board for certification in occupational therapy, inc.*, and adopted by the board.

(3) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) “Occupational therapist” means a person licensed to practice occupational therapy under this chapter.

(5) “Occupational therapy” means the *therapeutic* use of purposeful ~~goal-directed activities~~ *activity* and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an individual who is limited by ~~physical injury or illness, psychosocial dysfunction, mental illness, developmental or learning disability, the aging process, cognitive impairment, or an adverse environmental condition~~ *disease or*

disorders, impairments, activity limitations, or participation restrictions that interfere with the individual's ability to function independently in daily life roles. The practice encompasses evaluation, assessment, treatment, and consultation, remediation, and restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes. Occupational therapy services may be provided individually, in groups, or through social systems. Occupational therapy interventions include but are not limited to:

(a) ~~teaching daily living skills~~ *evaluating, developing, improving, sustaining, or restoring skills in activities of daily living, work or productive activities, including instrumental activities of daily living, and play and leisure activities;*

(b) *developing perceptual-motor skills and sensory integrative functioning;*

(c) *developing play skills and leisure capacities and enhancing educational performance skills;*

(d) ~~designing, fabricating, or applying splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremity~~ *orthotic or prosthetic devices, applying and training in the use of assistive technology, and training in the use of orthotic and prosthetic devices;*

(e) *providing for the development of emotional, motivational, cognitive, psychosocial, or physical components of performance;*

(f) *providing assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services;*

(g) ~~adapting environments for the disabled, including assistive technology, such as environmental controls, wheelchair modifications, and positioning~~ *adaptation of task, process, or the environment, as well as teaching of compensatory techniques, in order to enhance performance,*

(h) *developing feeding and swallowing skills;*

(i) *enhancing and assessing work performance and work readiness through occupational therapy intervention, including education and instruction, activities to increase and improve general work behavior and skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported employment placement;*

(j) *providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;*

(k) ~~employing~~ *application of physical agent modalities, as defined in this section, as an adjunct to or in preparation for engagement in purposeful goal-directed activity; and*

(l) *promoting health and wellness;*

(m) *evaluating and providing intervention in collaboration with the client, family, caregiver, or others;*

(n) *educating the client, family, caregiver, or others in carrying out appropriate nonskilled interventions;*

(o) *consulting with groups, programs, organizations, or communities to provide population-based services; and*

(p) *use of prescribed topical medications.*

(6) "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(7) "*Occupational therapy assistant*" means a person licensed to assist in the practice of occupational therapy under this chapter and who works under the general supervision of an occupational therapist.

~~(7)~~(8) "Physical agent modalities" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity. Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices. Use of superficial physical agent modalities is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-105. Use of sound and electrical physical agent modality devices is limited to the *shoulder, arm, elbow, forearm, wrist, and hand* and is subject to the provisions of 37-24-106.

~~(8)~~(9) "Purposeful *goal-directed* activity" means an activity in which the individual is an active, voluntary participant and is directed toward a goal that the individual considers meaningful. Purposeful activities are used to evaluate, facilitate, restore, or maintain individuals' abilities to function within their daily occupations.

(10) "*Topical medications*" means medications applied locally to the skin and includes only medications listed in [section 4(2)] for which a prescription is required under state or federal law."

Section 2. Section 37-24-106, MCA, is amended to read:

"37-24-106. Use of sound and electrical physical agent modalities. A

(1) *Except as provided in subsection (2), a person may not utilize occupational therapy techniques involving sound or electrical physical agent modality devices unless the person:*

~~(1)~~(a) is licensed under this chapter;

~~(2)~~(b) limits application of sound and electrical physical agent modalities to the *shoulder, arm, elbow, forearm, wrist, or hand* to restore and enhance ~~hand~~ *upper extremity* function; and

~~(3)~~~~(a)~~(c) (i) provides to the board documentation of certification by the hand certification commission, inc., and has successfully completed 40 hours of instruction or training in sound and electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c); or

~~(b)~~(ii) has successfully completed ~~40~~ 20 hours of instruction or training and *five proctored treatments under the direct supervision of a licensed medical practitioner in sound physical agent modality devices and 20 hours of instruction or training and five proctored treatments under the direct*

supervision of a licensed medical practitioner in electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c).

(2) A certified occupational therapy assistant who works under the direct supervision of a qualified occupational therapist may apply deep physical agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand."

Section 3. Use of occupational therapy techniques involving topical medications. A person may not utilize occupational therapy techniques involving topical medications as described in [section 4] unless the person has successfully completed the following hours of instruction in addition to those provided for in 37-24-106:

(1) 5 hours of instruction or training in pharmacology as it pertains to topical medications listed in [section 4(2)];

(2) one proctored treatment in direct application of topical medications under the direct supervision of a licensed medical practitioner; and

(3) (a) two proctored treatments in phonophoresis under the direct supervision of a licensed medical practitioner; or

(b) three proctored treatments of iontophoresis under the direct supervision of a licensed medical practitioner.

Section 4. Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements. (1) A licensed occupational therapist who meets the requirements of 37-24-106 may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process in which topical medications are applied through the use of electricity; or

(c) phonophoresis, a process in which topical medications are applied through the use of ultrasound.

(2) A licensed occupational therapist may apply or administer the following topical medications:

(a) bactericidal agents;

(b) debriding agents;

(c) anesthetic agents;

(d) anti-inflammatory agents;

(e) antispasmodic agents; and

(f) adrenocortico-steroids.

(3) (a) Topical medications applied or administered by a licensed occupational therapist must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications and must be purchased from a pharmacy certified under 37-7-321.

(b) Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(4) A licensed occupational therapist who applies or administers topical medications shall keep appropriate records with respect to those medications.

Section 5. Board adoption of protocols. The board, in consultation with the board of medical examiners and the board of pharmacy, shall adopt written protocols for each class of topical medication listed in [section 4(2)] for which a prescription is required by state or federal law. Protocols must include a description of each topical medication, its actions, indications, and contraindications, and the proper procedure and technique for its application or administration.

Section 6. Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 37, chapter 24, part 1, and the provisions of Title 37, chapter 24, part 1, apply to [sections 3 through 5].

Approved March 24, 2003

CHAPTER NO. 102

[SB 3]

AN ACT ELIMINATING THE REQUIREMENT THAT THE CLERKS OF THE DISTRICT COURTS AND THE CLERK OF THE SUPREME COURT COMPILER AND MAKE AVAILABLE CERTAIN INFORMATION RELATING TO SENTENCING IN CRIMINAL CASES; REPEALING SECTION 46-18-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 46-18-604, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2003

CHAPTER NO. 103

[SB 14]

AN ACT EXTENDING THE PERIOD FOR SUSPENSION OF ADJUDICATION PROCEEDINGS DURING NEGOTIATIONS OF FEDERAL INDIAN AND NON-INDIAN RESERVED WATER RIGHTS; AMENDING SECTIONS 85-2-217 AND 85-2-702, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-217, MCA, is amended to read:

“85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies that are negotiating are suspended. The obligation to file water rights claims for those federal non-Indian and Indian reserved rights is also suspended. This suspension is effective until July 1, ~~2005~~ 2009, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, ~~2005~~ 2009, the suspension must terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies are subject to the special filing

requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their federal non-Indian and Indian reserved water rights are subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section.”

Section 2. Section 85-2-702, MCA, is amended to read:

“85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings must be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Compact negotiations commence upon receipt of the written designation from the governing body of a tribe.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. However, if approval of the state legislature and the tribe has not been accomplished by July 1, ~~2005~~ 2009, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings must be used in the formulation of the preliminary decree and must be given treatment similar to that given to all other filings.”

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 4. Effective date. [This act] is effective July 1, 2003.

Approved March 24, 2003

CHAPTER NO. 104

[SB 17]

AN ACT PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE FOR ALL LEGISLATION ENACTED DURING A SPECIAL SESSION UNLESS A DIFFERENT TIME IS PRESCRIBED IN THE ENACTING LEGISLATION; AMENDING SECTION 1-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-2-201, MCA, is amended to read:

“1-2-201. Statutes — effective date. (1) (a) Except as provided in subsection (1)(b), ~~or (1)(c), or (1)(d)~~, every statute adopted after January 1, 1981, takes effect on the first day of October following its passage and approval unless a different time is prescribed in the enacting legislation.

(b) ~~Every~~ Subject to subsection (1)(d), every statute providing for appropriation by the legislature for public funds for a public purpose takes effect on the first day of July following its passage and approval unless a different time is prescribed in the enacting legislation.

(c) ~~Every~~ Subject to subsection (1)(d), every statute providing for the taxation of or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(d) Every statute enacted during a special session of the legislature takes effect upon passage and approval unless a different time is prescribed in the enacting legislation.

(2) “Passage”, as used in subsection (1), means the enactment into law of a bill, which has passed the legislature, either with or without the approval of the governor, as provided in the constitution.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2003

CHAPTER NO. 105

[SB 21]

AN ACT GENERALLY REVISING THE MONTANA BANK ACT; ELIMINATING THE PENALTY FOR A BANK'S PURCHASE OR LOAN OF ITS OWN CAPITAL STOCK; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO ENTER INTO AGREEMENTS WITH OTHER STATES DIVIDING SUPERVISORY RESPONSIBILITIES FOR CERTAIN ASPECTS OF INTERSTATE BANKING; REMOVING THE PROHIBITION ON THE USE OF THE WORDS “TRUST” AND “TRUSTEE” BY CERTAIN NONLICENSED ENTITIES; REMOVING CERTAIN RESTRICTIONS ON A BANK'S ABILITY TO BORROW MONEY; ESTABLISHING REQUIREMENTS FOR THE BUSINESS PLAN NEEDED BY BANKS TO HOLD REAL ESTATE FOR FUTURE USE; AND AMENDING SECTIONS 32-1-335, 32-1-370, 32-1-402, 32-1-412, AND 32-1-423, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-335, MCA, is amended to read:

“32-1-335. Purchase or loan of own capital stock prohibited — exception. A bank may not purchase or invest its capital or surplus or money of its depositors, or any part of either, in shares of its own capital stock or loan its capital or surplus or the money of its depositors, or any part of either, on shares of its own capital stock unless the purchase or loan is necessary to prevent loss to the bank on debts previously contracted in good faith. However, a bank may redeem or otherwise purchase its own capital stock with the prior approval of the department and subject to any conditions that the department may require. ~~A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the capital stock.”~~

Section 2. Section 32-1-370, MCA, is amended to read:

“32-1-370. Interstate merger of banks — interstate agreements. (1) ~~(a) A bank located in this state may not enter into a merger transaction with a bank not located in this state if the merger transaction would be effective on or before September 30, 2001.~~

~~(b) After September 30, 2001, a~~ A bank located in this state that has been in existence at least 5 years is authorized to enter into a merger transaction with a bank not located in this state.

~~(c)~~ Prior approval of the department is required if the resulting bank in a merger transaction authorized by this section is a bank organized under the laws of this state.

~~(2) This section implements 12 U.S.C. 1831u(a)(2) and prohibits until October 1, 2001, interstate merger transactions involving banks located in this state. With respect to interstate banking authorized in subsection (1), the department may enter into agreements with other states establishing the division of supervisory responsibilities between the state in which a bank is organized and the state or states in which branch banks may be located.”~~

Section 3. Section 32-1-402, MCA, is amended to read:

“32-1-402. When advertising as bank prohibited — trade names restricted. (1) Except as provided in subsection (4), a person, firm, company, partnership, or corporation, either domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received a certificate to do a banking business from the department, may not:

(a) advertise that the person or entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notices or certificates of deposit; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on checks; or

(iii) any other form of banking business is transacted there.

(2) The person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed papers that contain an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) The person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust, or investment company or in a manner that leads the public to believe that its business is that of a bank, savings bank, trust, or investment company.

(4) (a) A person, firm, company, partnership, or corporation, domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received from the department a certificate to do a banking business may not transact business

under a name or title that contains the word "bank", "banker", "banking", "savings bank", "saving", ~~"trust", "trustee",~~ "trust company", or "investment company" unless the department has granted a waiver. This section does not prohibit the use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to 12 U.S.C. 1844.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

(i) the organization is not acting as a financial institution; and

(ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state \$100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining the person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner ~~which~~ *that* leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require."

Section 4. Section 32-1-412, MCA, is amended to read:

"32-1-412. Borrowing money—limitations *Limits on excessive borrowing.* (1) ~~Except as provided in subsection (3), a bank may not borrow money except to meet its seasonal requirements or unexpected withdrawals. The bills payable and rediscounts of a bank may not be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. Security instruments sold under an agreement to repurchase do not apply to the limit on borrowing contained in this section. The division may prohibit excessive amounts of borrowing structured as a security instrument sold under an agreement to repurchase to a single customer or within the bank. When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.~~

~~(2) Subject to subsections (1) and (3), a bank may not at any time become indebted, either directly or indirectly, for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an investment company to run for a period of 3 years or more may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.~~

~~(3) A bank may borrow funds from a federal home loan bank for use:~~

~~(a) in financing home ownership;~~

~~(b) in financing affordable housing programs;~~

~~(c) in financing small business, small farm, and agribusiness loans; or~~

~~(d) in interest rate risk management, liquidity management, or other banking activities undertaken pursuant to federal home loan bank advance~~

~~programs authorized under the Federal Home Loan Bank Act or undertaken pursuant to rules or regulations of the federal housing finance board.~~

~~(4) Loans or extensions of credit from a federal home loan bank are not subject to any limitations based on capital or surplus. The division department may prevent excessive borrowing by an institution that would have a significant effect on the institution's safety and soundness. If it appears to the department that an institution's borrowing is having a significant effect on the institution's safety and soundness, the department may require the institution to reduce its borrowing within a timeframe determined by the department."~~

Section 5. Section 32-1-423, MCA, is amended to read:

"32-1-423. Real estate that banks may purchase, hold, or convey.

(1) (a) A bank organized under the provisions of this chapter may purchase, hold, or convey real estate that:

~~(a)~~(i) is for its accommodation in the transaction of its business, but it may not invest an amount exceeding 100% of its paid-up capital and surplus in the lot and building in which the business of the company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business if property held for future use as a bank office site is held pursuant to a *detailed written business plan formally adopted by the directors of the bank;*

~~(b)~~(ii) is mortgaged to it in good faith by way of security for loans previously made or money due to the bank;

~~(c)~~(iii) is conveyed to it in satisfaction of debts previously contracted in the course of its business;

~~(d)~~(iv) it purchases at sales under judgments, decrees, or mortgages held by the bank.

(b) The detailed written business plan required by subsection (1)(a)(i) must include information outlining the manner in which the acquired real estate will be developed for future use as a bank office site, including but not limited to the costs of projected construction, furniture, and equipment and fixtures. The plan must include sufficient information for the department to determine that the property will be used for a future bank office site.

(2) Real estate acquired in the manner set forth in subsections ~~(1)(c)~~ (1)(a)(iii) and ~~(1)(d)~~ (1)(a)(iv) may not be held longer than 5 years from the date of acquisition, unless special written permission is granted by the department. The real estate must be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title."

Approved March 24, 2003

CHAPTER NO. 106

[SB 27]

AN ACT PROVIDING THAT ONLY INCOME FROM ACTUAL GAINS AND LOSSES BE TRANSFERRED TO THE NOXIOUS WEED STATE SPECIAL REVENUE FUND; AMENDING SECTIONS 80-7-814 AND 80-7-816, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-814, MCA, is amended to read:

“80-7-814. Administration and expenditure of funds. (1) (a) Except as provided in subsection (1)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches \$2.5 million, except in case of a noxious weed emergency as provided in 80-7-815. Once this amount is accumulated, interest or revenue generated by the trust fund and by other funding measures provided by this part, *excluding unrealized gains and losses*, must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section, as long as the principal of the trust fund remains at least \$2.5 million.

(b) Money deposited as principal in the trust fund from [former 80-7-822] may not be expended until the principal of the trust fund reaches \$10 million. However, interest or revenue generated by the trust fund, *excluding unrealized gains and losses*, must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section.

(2) The department may expend funds under this section through grants or contracts to communities, weed control districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source or by an amount of not less than \$100,000 for first-class counties, as defined in 7-1-2111.

(3) The department may expend funds without the restrictions specified in subsection (2) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed control districts;

(c) special grants to local weed control districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(4) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(5) In making expenditures under subsections (2) and (3), the department shall give preference to weed control districts and community groups.

(6) If the noxious weed management trust fund is terminated by law, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose.”

Section 2. Section 80-7-816, MCA, is amended to read:

“80-7-816. Account — deposit — investment. (1) There is a noxious weed account in the state special revenue fund established in 17-2-102. The interest from the noxious weed management trust fund and the funds directed to be deposited as provided in 80-7-823, *excluding unrealized gains and losses*, must be deposited in the account and must be expended as provided in 80-7-705 and 80-7-814.

(2) The department may direct the board of investments to invest the funds collected under subsection (1) pursuant to the provisions of 17-6-201. The income from the investments must be credited to the account in the state special revenue fund.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2003

CHAPTER NO. 107

[SB 32]

AN ACT REVISING STATE LOTTERY FINGERPRINT REQUIREMENTS TO MEET CRITERIA REQUIRED BY THE FEDERAL BUREAU OF INVESTIGATION AS A PREREQUISITE TO FINGERPRINT CHECKS BY THE BUREAU; AMENDING SECTIONS 23-7-306 AND 23-7-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-7-306, MCA, is amended to read:

“23-7-306. Felony and gambling-related convictions — ineligibility for lottery positions. ~~No~~ A person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may *not* be a commissioner, director, assistant director, employee of the state lottery, or licensed ticket or chance sales agent. ~~Prior to appointment as a commissioner, director, assistant director, or employee, a person shall submit to the commission a full set of fingerprints made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency. The assistant director for security may require a ticket or chance sales agent to submit fingerprints prior to licensing.~~ *To determine a person's suitability for the position of commissioner, director, assistant director, or employee of the state lottery, the person shall submit the person's fingerprints to the department of justice. The department shall examine the fingerprints, and if a disqualifying record is not found, the department shall forward the fingerprints to the federal bureau of investigation for a national criminal history check.*”

Section 2. Section 23-7-310, MCA, is amended to read:

“23-7-310. Disclosures by gaming suppliers. (1) ~~Any~~ A person, firm, association, or corporation that submits a bid or proposal for a contract to supply lottery equipment, tickets, or other material or consultant services for use in the operation of the state lottery shall disclose at the time of ~~such~~ *the* bid or proposal:

(a) the supplier's business name and address and the names and addresses of the following:

(i) if the supplier is a partnership, all of the general and limited partners;

(ii) if the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) if the supplier is an association, the members, officers, and directors;

(iv) if the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; ~~except that.~~ *However*, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(v) if the supplier is a subsidiary company, each intermediary company, holding company, or parent company involved ~~therewith~~ *with the subsidiary company* and the officers, directors, and stockholders of each; ~~except that.~~ *However*, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company ~~which~~ *that* is a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(b) if the supplier is a corporation, all the states in which the supplier is authorized to do business and the nature of that business;

(c) other jurisdictions in which the supplier has contracts to supply gaming materials, equipment, or consultant services;

(d) the details of any conviction, state or federal, of the supplier or any person whose name and address are required by subsection (1)(a) of a criminal offense punishable by imprisonment for more than 1 year ~~and shall submit to the commission a full set of fingerprints of such person made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency;~~

(e) the details of any disciplinary action taken by any state against the supplier or any person whose name and address are required by subsection (1)(a) regarding any matter related to gaming consultant services or the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;

(f) audited annual financial statements for the preceding 5 years;

(g) a statement of the gross receipts realized in the preceding year from gaming consultant services and the sale, lease, or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(h) the name and address of any source of gaming materials or equipment for the supplier;

(i) the number of years the supplier has been in the business of supplying gaming consultant services or gaming materials or equipment; and

(j) any other information, accompanied by any documents the commission by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of this chapter.

(2) ~~No~~ A person, firm, association, or corporation contracting to supply gaming equipment or materials or consultant services to the state for use in the operation of the state lottery may *not* have any financial interest in any person, firm, association, or corporation licensed as a ticket or chance sales agent.

(3) ~~No~~ A contract for supplying consultant services or gaming materials or equipment for use in the operation of the state lottery is *not* enforceable against the state unless the requirements of this section have been fulfilled.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2003

CHAPTER NO. 108

[SB 33]

AN ACT CLARIFYING THAT ONLY PERMISSIBLE FIREWORKS MAY BE SOLD DURING AUTHORIZED TIME PERIODS; AMENDING SECTION 50-37-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-37-106, MCA, is amended to read:

“50-37-106. Sale of fireworks restricted to certain dates. A person, firm, or corporation may offer *permissible* fireworks, *as defined in 50-37-105*, of any kind for sale at retail only during the following periods:

(1) June 24 through July 5; and

(2) December 29 through December 31.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2003

CHAPTER NO. 109

[SB 38]

AN ACT REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO PROVIDE FORMS, MANUALS, AND ELECTION LAWS ELECTRONICALLY; REMOVING THE STATE'S OBLIGATION TO PAY FOR PAPER COPIES BUT REQUIRING THE STATE TO PROVIDE PAPER COPIES UPON REQUEST; AND AMENDING SECTION 13-37-117, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-117, MCA, is amended to read:

“13-37-117. Commissioner to provide forms, manuals, and election laws. (1) The commissioner shall prescribe forms for reports and other information required to be filed pursuant to chapter 35 ~~of this title~~ and this chapter and ~~furnish~~ provide forms and appropriate information to persons required to file reports and other information.

(2) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file reports pursuant to chapter 35 ~~of this title~~ or this chapter.

(3) The commissioner shall, ~~at the expense of the state, furnish~~ provide copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections to candidates and to any other persons required to file reports or other information pursuant to chapter 35 ~~of this title~~ or this chapter.

(4) *The commissioner shall provide copies of forms, manuals, and election laws referred to in this section electronically. Upon request, the commissioner shall provide paper copies.”*

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved March 24, 2003

CHAPTER NO. 110

[SB 40]

AN ACT PROVIDING FOR COORDINATION OF THE FILING, PROCESSING, AND GRANTING OF ALCOHOLIC BEVERAGE AND GAMBLING LICENSES APPLICATIONS; ALLOWING THE DEPARTMENT OF REVENUE TO CONTRACT WITH THE DEPARTMENT OF JUSTICE FOR THE RECEIPT AND PROCESSING OF ALCOHOLIC BEVERAGE LICENSE APPLICATIONS; REVISING ALCOHOLIC BEVERAGE INVESTIGATIVE PROCEDURES; REQUIRING ALCOHOLIC BEVERAGE AND GAMBLING LICENSE APPLICANTS TO SUBMIT FINGERPRINTS FOR PURPOSES OF A BACKGROUND INVESTIGATION; PROVIDING ADDITIONAL GROUNDS FOR TOLLING THE TIME PERIOD WITHIN WHICH AN ALCOHOLIC BEVERAGE LICENSE APPLICATION DETERMINATION MUST BE MADE; AMENDING SECTIONS 16-1-106, 16-1-302, 16-1-304, 16-4-207, 16-4-402, 16-4-406, 16-4-420, 23-5-119, AND 23-5-177, MCA; REPEALING SECTION 16-4-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fingerprints required of applicants. An applicant for a license under this code, any person employed by the applicant as a manager, and, if the applicant is a corporation, each person holding 10% or more of the outstanding stock and each officer and director shall submit their fingerprints with the application to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation. The results of the investigation must be used by the department in determining the applicant's eligibility for a license.

Section 2. Section 16-1-106, MCA, is amended to read:

“16-1-106. Definitions. As used in this code, the following definitions apply:

(1) “Agency franchise agreement” means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) “Agency liquor store” means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or *the* retail price for off-premises consumption.

(3) “Alcohol” means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) “Alcoholic beverage” means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) “Beer” means a malt beverage containing not more than 7% of alcohol by weight.

(6) “Beer importer” means a person other than a brewer who imports malt beverages.

(7) “Brewer” means a person who produces malt beverages.

(8) “Community” means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) “Department” means the department of revenue, unless otherwise specified, *and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.*

(10) “Hard cider” means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(11) “Immediate family” means a spouse, dependent children, or dependent parents.

(12) “Import” means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(13) “Liquor” means an alcoholic beverage except beer and table wine.

(14) “Malt beverage” means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(15) “Package” means a container or receptacle used for holding an alcoholic beverage.

(16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(18) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(21) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

(22) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(23) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(24) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

(25) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(26) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(27) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 3. Section 16-1-302, MCA, is amended to read:

"16-1-302. Functions, powers, and duties of department. The department has the following functions, duties, and powers:

(1) to buy, import, have in its possession for sale, and sell liquors;

(2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

(3) to determine the municipalities where agency liquor stores are to be established throughout the state and the situation of the stores within these municipalities;

(4) to lease, furnish, and equip any building or land required to administer its duties under this code;

(5) to buy or lease plants and equipment necessary to administer its duties under this code;

(6) to employ the necessary employees required to administer this code and to dismiss them, assign them their title, and define their respective duties and powers and to contract with the department of justice for investigative services *and to receive and process, but not grant or deny, applications* or to contract for the services of experts and persons engaged in the practice of a profession, if appropriate; *If the department contracts for the receipt and processing of an application by the department of justice, the application must state that it is to be filed with the department of justice.*

(7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

(8) to grant and issue licenses under this code;

(9) to place special restrictions on the use of a particular license, which must be endorsed upon the face of the license, if the special restrictions are made pursuant to a hearing held in connection with the issuance of the license or if the special restrictions are agreed to by the licensee;

(10) without limiting or being limited by the foregoing, to do all things necessary to administer this code or rules.”

Section 4. Section 16-1-304, MCA, is amended to read:

“16-1-304. Prohibited acts. (1) An employee of the department involved in the operation of the state liquor warehouse, the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with *license applications* or the investigation of matters concerning the manufacture, sale, and distribution of alcoholic beverages may not be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of a syndicate, shareholder, agent, or employee for the employee's own benefit or in a fiduciary capacity for some other person.

(2) An employee of the state, a state agent, or any person having any ownership interest in an agency liquor store may not solicit or receive, directly or indirectly, any commission, remuneration, gift, or other thing tangible or intangible of value from any person or corporation selling or offering liquor for sale to the state pursuant to this code.

(3) A person selling or offering for sale to or purchasing liquor from the state may not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any employee of the state, any state agent, or any person having any ownership interest in an agency liquor store or to anyone on behalf of an employee.

(4) The prohibition contained in subsection (3) does not prohibit the state from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any liquor to the state of Montana shall submit, without cost to the state prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of the merchandise to the state.

(b) When a brand of liquor has been accepted for testing by the state, the state shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The state shall maintain written records of all samples received. The records must show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the state's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) Liquor may not be withdrawn from the regular warehouse inventory or from the agency liquor stores for any purpose other than sale to persons who hold liquor licenses at the posted price and sale to the consumer at the retail price established by the agent or for destroying damaged or defective merchandise. The state shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse merchandise.

(6) The state may not require a company that manufactured, distilled, rectified, bottled, or processed and sold less than 200,000 proof gallons of liquor nationwide in the previous calendar year to maintain minimum amounts of liquor in the state warehouse while the distiller retains ownership of the product."

Section 5. Section 16-4-207, MCA, is amended to read:

"16-4-207. Notice of application — investigation — publication — protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of a retail license, the department shall review the application for completeness and, based upon review of the application and any other information supplied to the department, determine whether the applicant or the premises to be licensed meets criteria provided by law. The department may make one request for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the application information requested by the department. ~~If the applicant does not provide the additional application information within 30 days of the department's request, the department shall terminate the application and return it to the applicant with an explanation of why the application was terminated. The terminated application is not a denial, and the premises identified in the application are not subject to the provisions of 16-4-413. An applicant whose application is terminated may subsequently submit a new application.~~ When the application is complete, the department shall request that the department of justice shall investigate the application as provided in 16-4-402. When the department determines that an application for a license under this code is complete, the department shall publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made

application for a retail on-premises license or a transfer of location and that protests may be made against the approval of the application by a person who has extended credit to the transferor or by residents of the county from which the application comes or adjoining Montana counties. Protests may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is given that on the day of, 20..., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to, department of revenue, Helena, Montana, on or before the day of, 20...

Dated

Signed

.....
ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) (a) If the administrator receives no written protests, the department may approve the application without holding a public hearing.

(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).

(c) If the department receives sufficient written protests that satisfy the requirements in subsection (1) against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(b) If the department receives the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents

sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(c) The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages licenses determined for that quota area according to 16-4-201(1), (2), and (5) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption beer or all-beverages licenses.”

Section 6. Section 16-4-402, MCA, is amended to read:

“16-4-402. Application — investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department ~~shall request that the department of justice~~ shall make a thorough investigation of all matters relating to the application. Based on the results of the investigation or on other information, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant’s premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

(c) For an original license application and an application for transfer of location of a license, the department of justice’s investigation and the department’s determination under this subsection (2) must be completed within 90 days of the ~~request from the department to the department of justice~~ receipt of a completed application. If information is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. *The time period is also tolled if the applicant requests and is granted a delay in the license determination or if the license is for premises that are to be altered, as provided in 16-3-311, or newly constructed.* The basis for the tolling of the deadline must be documented.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(4) The department shall issue a conditional approval letter upon the last occurrence of either:

(a) completion of the investigation and determination provided for in subsection (2) if the department has not received information that would cause the department to deny the application; or

(b) a final agency decision that either denies or dismisses a protest against the approval of an application pursuant to 16-4-207.

(5) The conditional approval letter must state the reasons upon which the future denial of the application may be based. The reasons for denial of the application after the issuance of the conditional approval letter are as follows:

(a) there is false or erroneous information in the application;

(b) the premises are not approved by local building, health, or fire officials;

(c) there are physical changes to the premises that if known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or denial of the issuance of the conditional approval; or

(d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the department's final agency decision provided for in subsection (4)."

Section 7. Section 16-4-406, MCA, is amended to read:

"16-4-406. Renewal — suspension or revocation — penalty. (1) The department ~~may upon its own motion and~~ shall upon a written, verified complaint of a person request that the department of justice investigate the action and operation of a brewer, winery, wholesaler, or retailer licensed under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after *reviewing admissions of the licensee* or receiving the results of the department of justice's *or a local law enforcement agency's* investigation, has reasonable cause to believe that a licensee has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

(a) reprimand a licensee;

(b) proceed to revoke the license of the licensee;

(c) suspend the license for a period of not more than 3 months;

(d) refuse to grant a renewal of the license after its expiration; or

(e) impose a civil penalty not to exceed \$1,500.

~~(3) If the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act."~~

Section 8. Section 16-4-420, MCA, is amended to read:

"16-4-420. Restaurant beer and wine license. (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) in the case of an individual applicant:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors must meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange must meet the requirements of subsection (1)(b)(ii);

(d) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) A restaurant that sells its existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(3) ~~(a)~~ A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall ~~request that the department of justice make an investigation of all~~ *investigate* the items relating to the application as described in subsections (3)(a)~~(i)~~ through (3)(a)~~(iv)~~(d). Based on the results of the investigation ~~or in exercising~~ *and the exercise of* its sound discretion, the department shall determine whether:

~~(i)~~(a) the applicant is qualified to receive a license;

~~(ii)~~(b) the applicant's premises are suitable for the carrying on of the business;

~~(iii)~~(c) the requirements of this code and the rules promulgated by the department are ~~met and~~ complied with; and

~~(iv)~~(d) the seating capacity ~~as~~ stated on the application is correct.

~~(b) The department may retain 20% of the application fee collected under subsection (11) to defray the costs of the department and department of justice associated with investigating and processing applications.~~

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner meal.

(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant.

However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 50% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(iv) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license for that quota area.

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants from previous

selections must also be given a preference. An applicant with both preferences must be awarded a license before any applicant with only one preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies ~~issuing a license to an applicant~~ *an application*, the application fee, plus any interest, less a ~~\$100~~ processing fee *established by rule*, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) \$5,000 for restaurants with a stated seating capacity of 60 persons or less;

(b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is \$400.

(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license."

Section 9. Section 23-5-119, MCA, is amended to read:

"23-5-119. Appropriate alcoholic beverage license for certain gambling activities. (1) Except as provided in subsection (3), to be eligible to

offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant shall own in the applicant's name:

- (a) a retail all-beverages license issued under 16-4-201;
- (b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises;
- (c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6;
- (d) a retail beer and wine license issued under 16-4-109;
- (e) a retail all-beverages license issued under 16-4-202; or
- (f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

(4) A license transferee or a qualified purchaser operating pending final approval under 16-4-404(6) who has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title 23, chapter 5, part 3, 5, or 6.

Section 10. Section 23-5-177, MCA, is amended to read:

"23-5-177. Operator of gambling establishment — license — fee. (1) It is a misdemeanor for a person who is not licensed by the department as an operator to make available to the public for play a gambling device or gambling enterprise for which a permit must be obtained from the department.

(2) To obtain an operator's license, a person shall submit to the department:

(a) a completed operator's license application on a form prescribed and furnished by the department;

(b) the person's fingerprints and, if the applicant is a corporation, the fingerprints of each person holding 10% or more of the outstanding stock of the corporation and of each officer and director of the corporation, to be used for a fingerprint and background check that must be used by the department in determining eligibility for a license;

~~(b)(c)~~ any other relevant information requested by the department; and

~~(c)(d)~~ a license application processing fee, as required in subsection (8).

(3) Before issuing an operator's license, the department shall approve, in accordance with 23-5-117, the premises in which the gambling activity is to be conducted.

(4) Except as provided in 23-5-117, regardless of the number of on-premises alcoholic beverage licenses issued for a premises, the department may issue only one operator's license for the premises.

(5) An operator's license must include the following information:

(a) a description of the premises upon which the gambling will take place;

(b) the operator's name;

(c) a description of each gambling device or card game table for which a permit has been issued to the operator by the department for play upon the premises, including the type of game and permit number for each game; and

(d) any other relevant information determined necessary by the department.

(6) The operator's license must be issued annually along with all other permits for gambling devices or games issued to the operator.

(7) The operator's license must be updated each time a video gambling machine, bingo, keno, or card game table permit is newly issued or the machine or game is removed from the premises.

(8) The department shall charge an applicant who has submitted an operator's license application on or after July 1, 1991, a one-time license application processing fee to cover the actual cost incurred by the department in determining whether the applicant qualifies for licensure under 23-5-176. After making its determination, the department shall refund any overpayment or charge and collect amounts sufficient to reimburse the department for any underpayment of actual costs.

(9) The operator's license must be prominently displayed upon the premises for which it is issued."

Section 11. Repealer. Section 16-4-403, MCA, is repealed.

Section 12. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 4, and the provisions of Title 16 apply to [section 1].

Section 13. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2003

CHAPTER NO. 111

[HB 71]

AN ACT ELIMINATING THE TERMINATION DATE ON THE DEPARTMENT OF TRANSPORTATION'S AUTHORITY TO STOP AND INSPECT DIESEL-POWERED VEHICLES SUSPECTED OF ILLEGALLY USING DYED FUEL; REPEALING SECTION 2, CHAPTER 206, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 2, Chapter 206, Laws of 2001, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2003

CHAPTER NO. 112

[HB 264]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO REQUIRE COUNTY OFFICERS TO SUPERVISE STAFF IN A MANNER THAT COMPLIES WITH COUNTY PERSONNEL POLICIES AND PROCEDURES; AND AMENDING SECTION 7-4-2110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2110, MCA, is amended to read:

“7-4-2110. Supervision of county and other officers. The board of county commissioners has jurisdiction and power, under ~~such~~ the limitations and restrictions ~~as that~~ are prescribed by law, to:

(1) supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, ~~management~~ *managing*, or ~~disbursement of the~~ *disbursing* public ~~revenues~~ *revenue*;

(2) see that ~~they~~ *the officers* faithfully perform their duties;

(3) direct prosecutions for delinquencies; ~~and~~

(4) when necessary, require ~~them~~ *the officers* to renew their official bonds, make reports, and present their books and accounts for inspection; *and*

(5) *require the officers to supervise staff in a manner that complies with personnel policies and procedures adopted by the county governing body.”*

Approved March 25, 2003

CHAPTER NO. 113

[SB 5]

AN ACT INCREASING TO \$30 MILLION THE AUTHORITY TO ISSUE GENERAL OBLIGATION BONDS TO MAKE LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTION 85-1-624, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-624, MCA, is amended to read:

“85-1-624. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation renewable resource bonds for the renewable resource grant and loan program created under Title 85, chapter 1, part 6, in accordance with the terms and conditions and in the manner provided in 85-1-617 from time to time and in amounts that, taking into consideration the principal amount of any renewable resource bonds then outstanding, will not cause the total aggregate principal amount of renewable resource bonds outstanding at any time to exceed ~~\$20~~ \$30 million.”

Section 2. Two-thirds vote required. Because [section 1] authorizes the creation of state debt, Article III, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 3. Effective date. [This act] is effective July 1, 2003.

Approved March 25, 2003

CHAPTER NO. 114

[SB 10]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 58TH LEGISLATURE; AMENDING SECTIONS 1-11-102, 2-2-106, 2-7-501, 2-15-114, 2-17-512, 3-2-605, 3-10-207, 3-20-103, 5-5-227, 7-1-202, 7-4-2502, 7-6-611, 7-6-612, 7-14-112, 7-15-4283, 7-15-4288, 7-32-2128, 13-35-226, 15-6-138, 15-7-102, 15-7-307, 15-23-703, 15-30-106, 15-30-111, 15-30-121, 15-30-136, 15-30-201, 15-30-301, 15-31-102, 15-31-114, 15-31-150, 15-31-404, 15-31-405, 15-32-405, 15-36-324, 15-50-205, 15-50-206, 15-70-201, 15-72-102, 16-11-101, 17-4-106, 17-5-703, 17-5-1102, 17-5-1103, 17-5-1111, 17-7-140, 19-1-102, 19-2-303, 19-2-405, 19-2-408, 19-3-2117, 19-5-902, 19-6-711, 19-9-1013, 19-9-1204, 19-13-1011, 19-20-101, 19-21-203, 19-21-214, 19-50-102, 19-50-103, 20-9-344, 20-10-205, 20-25-301, 20-25-427, 23-1-105, 23-2-809, 25-13-402, 27-1-732, 31-1-704, 31-2-106, 33-20-1317, 37-7-602, 37-24-104, 37-24-303, 39-10-204, 39-51-2501, 40-5-906, 40-5-909, 41-3-439, 41-5-103, 41-5-215, 41-5-216, 42-10-101, 45-5-503, 45-5-603, 45-9-101, 45-9-102, 45-9-103, 45-9-110, 45-10-107, 46-18-242, 46-23-1004, 46-24-211, 50-2-111, 50-4-502, 50-4-504, 50-4-505, 50-5-101, 50-5-301, 50-60-313, 52-1-103, 53-2-103, 53-3-115, 53-4-221, 53-4-222, 53-4-232, 53-4-601, 53-4-609, 53-18-101, 53-21-186, 53-30-403, 61-3-103, 61-3-570, 61-3-736, 61-8-906, 69-8-104, 69-8-501, 70-24-436, 72-16-607, 75-11-302, 75-20-301, 76-6-109, 77-6-114, 80-7-814, 80-8-120, 81-6-105, 85-20-1004, 85-20-1005, 85-20-1007, 87-1-209, 87-1-221, 90-6-127, AND 90-6-715, MCA, SECTION 17, CHAPTER 414, LAWS OF 2001, AND SECTION 5, CHAPTER 522, LAWS OF 2001; AND REPEALING SECTIONS 5-18-107, 46-23-1033, 50-4-312, AND 53-2-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-102, MCA, is amended to read:

“1-11-102. Name — citation — correct form. (1) The recodified laws shall be known as the “Montana Code Annotated” and may be cited as “MCA”.

(2) *An example of the correct citation form for a section of the Montana Code Annotated is “1-11-102, MCA”.*

Section 2. Section 2-2-106, MCA, is amended to read:

“2-2-106. Disclosure. (1) (a) Prior to December 15 of each even-numbered year, each elected official or department director shall file with the commissioner of *political practices* a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner of *political practices* on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) The statement must provide the following information:

(a) the name, address, and type of business of the individual;

(b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) The commissioner of *political practices* shall make the business disclosure statements available to any individual upon request."

Section 3. Section 2-7-501, MCA, is amended to read:

"2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1756.

(3) "Department" means the department of administration.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed ~~control~~ *management* districts;

(ix) drainage districts;

(x) fire department relief associations;

(xi) fire districts;

(xii) hospital districts;

(xiii) incorporated cities or towns;

(xiv) irrigation districts;

(xv) mosquito districts;

(xvi) municipal housing authority districts;

(xvii) port authorities;

(xviii) solid waste management districts;

(xix) rural improvement districts;

(xx) school districts including a district's extracurricular funds;

(xxi) soil conservation districts;

(xxii) special education or other cooperatives;

(xxiii) television districts;

(xxiv) urban transportation districts;

(xxv) water conservancy districts; and

(xxvi) other miscellaneous and special districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 4. Section 2-15-114, MCA, is amended to read:

“2-15-114. Security responsibilities of departments for data and information technology resources. Each department head is responsible for ensuring an adequate level of security for all data and information technology resources within that department and shall:

(1) develop and maintain written internal policies and procedures to ensure security of data and information technology resources. The internal policies and procedures are confidential information and exempt from public inspection, except that the information must be available to the legislative auditor in performing postauditing duties.

(2) designate an information security manager to administer the department’s security program for data and information technology resources;

(3) implement appropriate cost-effective safeguards to reduce, eliminate, or recover from identified threats to data and information technology resources;

(4) ensure that internal evaluations of the security program for data and information technology resources are conducted. The results of the internal evaluations are confidential and exempt from public inspection, except that the information must be available to the legislative auditor in performing postauditing duties.

(5) include appropriate security requirements, as determined by the department, in the written specifications for the department’s solicitation of data and information technology resources; and

(6) include a general description of the existing security program and future plans for ensuring security of data and information technology resources in the agency information technology plan as provided for in 2-17-523.”

Section 5. Section 2-17-512, MCA, is amended to read:

“2-17-512. Powers and duties of department. (1) The department is responsible for carrying out the planning and program responsibilities for information technology for state government, *except the national guard*. The department:

(a) shall encourage and foster the development of new and innovative information technology within state government;

(b) shall promote, coordinate, and approve the development and sharing of shared information technology application software, management systems, and information that provide similar functions for multiple state agencies;

(c) shall cooperate with the ~~department of commerce~~ *office of economic development* to promote economic development initiatives based on information technology;

(d) shall establish and enforce a state strategic information technology plan as provided for in 2-17-521;

(e) shall establish and enforce statewide information technology policies and standards;

(f) shall review and approve state agency information technology plans provided for in 2-17-523;

(g) shall coordinate with the office of budget and program planning to evaluate budget requests that include information technology resources. The department shall make recommendations to the office of budget and program

planning for the approval or disapproval of information technology budget requests. An unfavorable recommendation must be based on a determination that the request is not provided for in the approved agency information technology plan provided for in 2-17-523.

(h) shall staff the information technology board provided for in 2-15-1021;

(i) shall fund the administrative costs of the information technology board provided for in 2-15-1021;

(j) shall review the use of information technology resources for all state agencies;

(k) shall review and approve state agency specifications and procurement methods for the acquisition of information technology resources;

(l) shall review, approve, and sign all state agency contracts and shall review and approve other formal agreements for information technology resources provided by the private sector and other government entities;

(m) shall operate and maintain a central computer center for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(n) shall operate and maintain a statewide telecommunications network for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(o) shall ensure that the statewide telecommunications network is properly maintained. The department may establish a centralized maintenance program for the statewide telecommunications network.

(p) shall coordinate public safety communications on behalf of all state agencies as provided for in 2-17-541 through 2-17-543;

(q) shall manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;

(r) shall provide electronic access to information and services of the state as provided for in 2-17-532;

(s) shall provide assistance to the legislature, the judiciary, the governor, and state agencies relative to state and interstate information technology matters;

(t) shall establish rates and other charges for services provided by the department;

(u) must accept federal funds granted by congress or by executive order and gifts, grants, and donations for any purpose of this section;

(v) shall dispose of personal property owned by it in a manner provided by law when, in the judgment of the department, the disposal best promotes the purposes for which the department is established;

(w) shall implement this part and all other laws for the use of information technology in state government;

(x) shall report to the appropriate interim committee on a regular basis and to the legislature as provided in 5-11-210 on the information technology activities of the department; and

(y) shall represent the state with public and private entities on matters of information technology.

(2) If it is in the state's best interest, the department may contract with qualified private organizations, foundations, or individuals to carry out the purposes of this section.

(3) The director of the department shall appoint the chief information officer to assist in carrying out the department's information technology duties."

Section 6. Section 3-2-605, MCA, is amended to read:

"3-2-605. Responsibilities of supreme court for security of data and information. The supreme court is responsible for ~~assuring~~ *ensuring* an adequate level of security for data and information technology resources, as defined in 2-15-102, within the judicial branch. In carrying out this responsibility, the supreme court shall, at a minimum:

(1) address the responsibilities prescribed in 2-15-114; and

(2) develop written minimum standards and guidelines for the judicial branch to follow in developing its security program."

Section 7. Section 3-10-207, MCA, is amended to read:

"3-10-207. Salaries. (1) The board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as provided in 7-4-2504(~~1~~).

(2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county.

(3) If the justice's court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office."

Section 8. Section 3-20-103, MCA, is amended to read:

"3-20-103. (Effective on occurrence of contingency) Asbestos claims court — venue — jury pool. (1) The asbestos claims judge may hear an asbestos-related claim in any venue stipulated by the parties as provided in 25-2-202 or in any venue otherwise determined by the asbestos claims judge in accordance with a stipulation of the parties. In stipulating venue, the parties shall take into consideration the availability of courtroom facilities. The asbestos claims court may prepare a list of available courtroom facilities for consideration of the parties.

(2) The pool of prospective jurors for an asbestos-related claim may be drawn from any county in accordance with a stipulation of the parties. The jurors must be drawn, as provided in 3-15-501 and 3-15-503, from the jury lists of the counties comprising the jury pool. The clerk of the district court for the district in which the trial is conducted shall notify the prospective jurors ~~and make the statement provided for in 3-15-204(4).~~"

Section 9. Section 5-5-227, MCA, is amended to read:

"5-5-227. Revenue and transportation interim committee — powers and duties — revenue estimating and use of estimates. (1) The revenue and transportation interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of revenue and the department of transportation and the entities attached to the departments for administrative purposes.

(2) *The committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under*

consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

(4) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state."

Section 10. Section 7-1-202, MCA, is amended to read:

~~7-1-202. Transition of existing boards and creation~~ Creation of new boards. (1) ~~Unless otherwise specified by law, the state laws providing for the organization and operation of the following administrative boards, districts, and commissions must be given the status of local ordinances for 1 year following October 1, 1995, and the following boards, districts, and commissions shall continue to function during this period under the respective laws until the boards, districts, or commissions are reorganized by the county commissioners pursuant to the provisions of 7-1-201. Subject to 7-1-201 and 7-1-203 and in addition to the following, a county may create administrative boards, districts, and commissions that are not otherwise provided for by law:~~

- ~~(a)~~(1) county building commission;
- ~~(b)~~(2) cemetery districts;
- ~~(c)~~(3) county fair commission;
- ~~(d)~~(4) mosquito control board;
- ~~(e)~~(5) museum board;
- ~~(f)~~(6) board of park commissioners;
- ~~(g)~~(7) rodent control board;
- ~~(h)~~(8) solid waste district;
- ~~(i)~~(9) television district;
- ~~(j)~~(10) weed ~~control~~ management district.

~~(2) Subject to 7-1-201 and 7-1-203, a county may create administrative boards, districts, and commissions, in addition to those listed in subsection (1), that are not otherwise provided for by law."~~

Section 11. Section 7-4-2502, MCA, is amended to read:

~~7-4-2502. Payment of salaries of county officials and assistants.~~ (1) The salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The salary of the county attorney is payable one-half from the general fund of the county and, if the county has supplied the information to the department of justice for inclusion in its budget, the other one-half from the state treasury upon the warrant of the state treasurer. If the county has not supplied information concerning any scheduled or proposed increase in salary

for the county attorney to the department of justice for inclusion in material submitted to the budget director under Title 17, chapter 7, part 1, the county is responsible for any increased salary. The state's share of the county attorney's salary is payable every 2 weeks.

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the department of justice. The department shall notify the state treasurer of the salary of the county attorney. The state treasurer shall draw warrants for the county attorney salaries in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the department of justice, and the department shall compute the salary due on the basis of the notification.

(3) The board may, under limitations and restrictions prescribed by law, fix the compensation of all county officers not otherwise fixed by law and provide for the payment of the compensation and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(4), set their salaries at the prior fiscal year level."

Section 12. Section 7-6-611, MCA, is amended to read:

"7-6-611. Role of department of administration. (1) The department of administration shall prescribe for all local governments:

(a) general methods and details of accounting in accordance with generally accepted accounting principles as provided in 2-7-504;

(b) uniform internal and interim reporting systems as part of the uniform reporting systems provided for in 2-7-503;

(c) the form of the annual financial report as provided in 2-7-503; and

(d) general methods and details of accounting for the annual financial report as provided in 2-7-513.

(2) Local governments shall file with the department of administration:

(a) an annual financial report within 6 months of the fiscal yearend; and

(b) an audit report within 12 months of the end of the audited period.

(3) The governing body of each county or municipality shall notify the department of administration in writing, on a form prescribed by the department of ~~commerce~~ *administration*, of the creation, dissolution, combination, or other legal alteration of any special purpose district within the county or municipality.

(4) Each special purpose district shall obtain a permanent mailing address and notify the department of administration of the address and of any subsequent changes of the district's address."

Section 13. Section 7-6-612, MCA, is amended to read:

"7-6-612. Additional records and reports. (1) The chief executive or governing body of a county or municipality may require any elected or appointed local government official or employee to:

(a) maintain new or additional financial records;

(b) perform new or additional financial reconciliations; and

(c) submit new or additional financial reports.

(2) This part does not provide for the consolidation or reassignment, but does not prohibit delegation by mutual agreement, of any duties of elected county officials. Continuing county duties include but are not limited to the following:

(a) The county treasurer shall make a detailed monthly report to the governing body of the county of all receipts, disbursements, debt, and other proceedings of the treasurer's office.

(b) The county clerk shall compile and present to the governing body of the county the annual financial report provided for in 7-6-611(2)(a).

(3) The designated county or municipal treasurer shall:

(a) receive, disburse, and serve as the custodian of all public money;

(b) provide for accountability of all local government cash receipts and for deposits and investments of all departments, offices, and boards;

(c) pay out, in the order registered, all warrants presented for payment when there are funds in the treasury to pay the warrants; and

(d) require periodic departmental reports of money receipts and their disposition on forms that the designated county or municipal treasurer prescribes.

(4) All local governments:

(a) shall deposit all public money with the county or municipal treasurer within a month of receipt unless otherwise specifically authorized by law;

(b) may not maintain separate bank accounts unless specifically authorized by the county or municipal governing body;

(c) may not maintain separate investments.

~~(5) The provisions of subsections (3) and (4) apply to local governments that are not subject to an independent audit pursuant to 2-7-503 and are in addition to laws specifically applying to those local governments.~~

~~(6)~~(5) The governing body of a county or municipality shall direct the county or municipal treasurer to open separate accounts for the receipt of money for the governing body. Only the county or municipal treasurer may open an account for the receipt of local government money."

Section 14. Section 7-14-112, MCA, is amended to read:

"7-14-112. Senior citizen and persons with disabilities transportation services account — use. (1) There is a senior citizen and persons with disabilities transportation services account in the state special revenue fund. Money must be deposited in the account pursuant to ~~61-3-406~~ 61-3-321(6)(a).

(2) Except as provided in subsection (6), the account must be used to provide operating funds to counties, incorporated cities and towns, transportation districts, or nonprofit organizations for transportation services for persons 60 years of age or older and for persons with disabilities.

(3) (a) Subject to the conditions of subsection (3)(b), the department of transportation is authorized to award grants to counties, incorporated cities and towns, transportation districts, and nonprofit organizations for transportation services using guidelines established in the state management plan for the purposes described in 49 U.S.C. 5310 and 5311.

(b) Priority for awarding grants must be determined according to the following factors:

(i) the most recent census or federal estimate of persons 60 years of age or older and persons with disabilities in the area served by a county, incorporated city or town, transportation district, or nonprofit organization;

(ii) the annual number of trips provided by the transportation provider to persons 60 years of age or older and to persons with disabilities in the transportation service area;

(iii) the ability of the transportation provider to provide matching money in an amount determined by the department of transportation; and

(iv) the coordination of services as required in subsection (5).

(4) The department of transportation shall ensure that the available funding is distributed equally among the five transportation districts provided in 2-15-2502.

(5) In awarding grants, the department of transportation shall give preference to proposals that:

(a) include the establishment of a transit authority to coordinate service area or regional transportation services;

(b) address and document the transportation needs within the community, county, and service area or region;

(c) identify all other transportation providers in the community, county, and service area or region;

(d) explain how services are going to be coordinated with the other transportation providers in the service area or region;

(e) indicate how services are going to be expanded to meet the unmet needs of senior citizens and disabled persons within the community, county, and service area or region who are dependent upon public transit;

(f) include documentation of coordination with other local transportation programs within the community, county, and service area or region, including:

(i) utilization of existing resources and equipment to maximize the delivery of service; and

(ii) the projected increase in ridership and expansion of service;

(g) invite school districts to participate or be included in the transportation coordination efforts within the community, county, and service area or region; and

(h) at a minimum, comply with the provisions in subsections (5)(b) through (5)(f).

(6) Any amount of money remaining after grants have been awarded to transportation providers who provide transportation services for persons 60 years of age or older and persons with disabilities may be awarded to other transportation providers for operating costs for the purposes described in 49 U.S.C. 5311 other than for transportation services for persons 60 years of age or older or persons with disabilities."

Section 15. Section 7-15-4283, MCA, is amended to read:

"7-15-4283. Definitions related to tax increment financing. For purposes of 7-15-4282 through 7-15-4292 and 7-15-4297 through 7-15-4299, the following definitions apply unless otherwise provided or indicated by the context:

(1) "Actual taxable value" means the taxable value of taxable property at any time, as calculated from the assessment roll last equalized.

(2) "Aerospace transportation and technology district" means a tax increment financing aerospace transportation *and* technology district created pursuant to 7-15-4296.

(3) "Aerospace transportation and technology infrastructure development project" means a project undertaken within or for an aerospace transportation and technology district that consists of any or all of the activities authorized by 7-15-4288.

(4) "Base taxable value" means the actual taxable value of all taxable property within an urban renewal area, industrial district, or aerospace transportation and technology district prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or 7-15-4293.

(5) "Incremental taxable value" means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all property within an urban renewal area, industrial district, or aerospace transportation and technology district subject to taxation.

(6) "Industrial district" means a tax increment financing industrial district created pursuant to 7-15-4299.

(7) "Industrial infrastructure development project" means a project undertaken within or for an industrial district that consists of any or all of the activities authorized by 7-15-4288.

(8) "Municipality", for the purpose of an industrial district created pursuant to 7-15-4297 through 7-15-4299 and operating pursuant to 7-15-4282 through 7-15-4293 and part 43 of this chapter, means any incorporated city or town, county, or city-county consolidated local government.

(9) "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area, industrial district, aerospace transportation and technology district, or a part of an area or district is located against the incremental taxable value.

(10) "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through 7-15-4292.

(11) "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

(12) "Taxing body" means any city, town, county, school district, or other political subdivision or governmental unit of the state, including the state, ~~which~~ *that* levies taxes against property within the urban renewal area, industrial district, or an aerospace transportation and technology district."

Section 16. Section 7-15-4288, MCA, is amended to read:

"7-15-4288. Costs that may be paid by tax increment financing. The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project, industrial infrastructure development project, or aerospace transportation and technology infrastructure development project:

- (1) land acquisition;
- (2) demolition and removal of structures;

- (3) relocation of occupants;
- (4) the acquisition, construction, and improvement of infrastructure, industrial infrastructure, or aerospace transportation and technology infrastructure that includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, spaceports for reusable launch vehicles with associated runways and launch, recovery, fuel manufacturing, and cargo holding facilities, publicly owned buildings, and any public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;
- (5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;
- (6) acquisition of infrastructure-deficient areas or portions of areas;
- (7) administrative costs associated with the management of the industrial district or the aerospace transportation and technology district;
- (8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself at its fair value;
- (9) the compilation and analysis of pertinent information required to adequately determine the infrastructure needs of secondary, value-adding industries in the industrial district or the needs of an aerospace transportation and technology infrastructure development project in the aerospace transportation and technology district;
- (10) the connection of the industrial district or the aerospace transportation and technology district to existing infrastructure outside the industrial district or the aerospace transportation and technology district;
- (11) the provision of direct assistance, through industrial infrastructure development projects or aerospace transportation and technology infrastructure development projects, to secondary, value-adding industries to assist in meeting their infrastructure and land needs within the industrial district or the aerospace transportation and technology district; and
- (12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution."

Section 17. Section 7-32-2128, MCA, is amended to read:

"7-32-2128. False claims by sheriff. ~~Every~~ A sheriff who falsely represents to the board of county commissioners or ~~attorney general his~~ ~~governor the sheriff's~~ actual traveling expenses in the performance of any official duty or causes to be paid to ~~him~~ ~~the sheriff~~ from the state or any county treasury a sum exceeding ~~his~~ ~~the~~ actual expenses in the performance of ~~his~~ ~~the~~ sheriff's duty is guilty of a misdemeanor."

Section 18. Section 13-35-226, MCA, is amended to read:

"13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes,

devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees.

(2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing:

(a) any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected:

(i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased;

(ii) the employer's place or establishment will be closed; or

(iii) the salaries or wages of the workers or employees will be reduced or increased; or

(b) other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees.

(3) A person may not coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to express personal political views.

(5) A person who violates this section is liable in a civil action authorized by ~~13-27-128~~ 13-37-128, brought by the commissioner or a county attorney pursuant to 13-37-124 and 13-37-125."

Section 19. Section 15-6-138, MCA, is amended to read:

"15-6-138. (Temporary) Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors ~~as provided~~ as provided in 15-6-201, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income, in the last full year for which data is available, is at least 2.85% from the prior year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) The department shall calculate the percentage growth in subsection (5)(a) by using the formula $(W/CPI) - 1$, where:

(i) W is the Montana wage and salary income for the most current available year divided by the Montana wage and salary income for the year prior to the most current available year; and

(ii) CPI is the consumer price index for the most current available year used in subsection (5)(b)(i) divided by the consumer price index for the year prior to the most current available year as used in subsection (5)(b)(i).

(c) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the wage and salary data series referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements. Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of \$5,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)"

Section 20. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on

the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

- (i) change in ownership;
- (ii) change in classification;
- (iii) except as provided in subsection (1)(b), change in valuation; or
- (iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the ~~exemption~~ *exemptions* under 15-6-201 (1)(z) and (1)(aa) or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer's informational purposes:

- (i) the total amount of mills levied against the property in the prior year; and
- (ii) a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land

or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 21. Section 15-7-307, MCA, is amended to read:

"15-7-307. Certificate — exceptions. The certificate ~~imposed~~ *required* by this part applies to all transfers. However, the certificate filed for the following transfers need not disclose the consideration paid or to be paid for the real estate transferred:

(1) an instrument recorded prior to July 1, 1975;

(2) the sale of agricultural land when the land is used for agricultural purposes;

(3) the sale of timberland when the land is used for producing timber;

(4) *a transfer by the United States of America, this state, or any instrumentality, agency, or subdivision thereof of the United States or this state;*

(5) an instrument ~~which~~ *that* (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;

(6) a transfer pursuant to a court decree;

(7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;

(8) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

(9) a transfer of decedents' estates;

- (10) a transfer of a gift;
- (11) a transfer between husband and wife or parent and child with only nominal actual consideration ~~therefor~~ *for the transfer*;
- (12) an instrument the effect of which is to transfer the property to the same party or parties;
- (13) a sale for delinquent taxes or assessments, ~~sheriff~~ *sheriff's* sale, bankruptcy action, or mortgage foreclosure;
- (14) a transfer made in contemplation of death.”

Section 22. Section 15-23-703, MCA, is amended to read:

“15-23-703. Taxation of gross proceeds — taxable value for county classification and guaranteed tax base aid to schools. (1) The department shall compute from the reported gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall ~~proceed to give full notice, as provided in 15-16-101,~~ to each coal producer of the taxes due and shall collect the taxes.

(2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year."

Section 23. Section 15-30-106, MCA, is amended to read:

"15-30-106. Tax on lump-sum distributions. (1) ~~There is imposed a A~~ separate tax *is imposed* on lump-sum distributions.

(2) The tax is 10% of the amount of tax determined under section 402(e) of the Internal Revenue Code of 1954, 26 U.S.C. 402(e) ~~as amended, or as section 402(e) may be renumbered or amended.~~

(3) All means available for the administration and enforcement of income taxes ~~shall~~ *must* be applied to the tax on lump-sum distributions."

Section 24. Section 15-30-111, MCA, is amended to read:

"15-30-111. (Temporary) Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal ~~income tax~~ adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, ~~as that section may be labeled or amended,~~ and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), ~~as that section may be amended or renumbered,~~ that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of ~~1954~~ that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the ~~federal~~ Internal Revenue Code of ~~1954, as labeled or amended~~, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of ~~1986~~, 26 U.S.C. 852(b)(5), ~~as that section may be amended or renumbered~~, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes; and

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, 26 U.S.C. 38 and 51(a), ~~as those sections may be labeled or amended~~, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base

used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion ~~and before application of the two-earner married couple deduction~~ exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)

15-30-111. (Effective on occurrence of contingency) Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal ~~income tax~~ adjusted gross income as defined in section 62 of the Internal Revenue Code ~~of 1954~~, 26 U.S.C. 62, ~~as that section may be labeled or amended~~, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code ~~of 1986~~, 26 U.S.C. 852(b)(5), ~~as that section may be amended or~~

~~renumbered~~, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code ~~of 1954~~ that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the ~~federal~~ Internal Revenue Code ~~of 1954, as labeled or amended~~, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code ~~of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered~~, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the

Internal Revenue Code of 1954, 26 U.S.C. 38 and 51(a), ~~as those sections may be labeled or amended,~~ is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion ~~and before application of the two-earner married couple deduction~~ exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

Section 25. Section 15-30-121, MCA, is amended to read:

“15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code, ~~of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended~~, subject to the following exceptions, which are not deductible:

- (i) items provided for in 15-30-123;
 - (ii) state income tax paid;
 - (iii) premium payments for medical care as provided in subsection (1)(g)(i);
 - (iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii);
- (b) federal income tax paid within the tax year;
- (c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:
- (i) expenses for household and dependent care services necessary for gainful employment incurred for:
 - (A) a dependent under 15 years of age for whom an exemption can be claimed;
 - (B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and
 - (C) a spouse who is unable to provide self-care because of physical or mental illness;
 - (ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:
 - (A) household services that are attributable to the care of the qualifying individual; and
 - (B) care of an individual who qualifies under subsection (1)(c)(i);
 - (iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;
 - (iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:
 - (A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed \$4,800;
 - (B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:
 - (I) \$2,400 in the case of one qualifying individual;

- (II) \$3,600 in the case of two qualifying individuals; and
- (III) \$4,800 in the case of three or more qualifying individuals;
- (v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;
- (vi) for purposes of this subsection (1)(c):
 - (A) married couples shall file a joint return or file separately on the same form;
 - (B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:
 - (I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or
 - (II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);
 - (C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;
 - (D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;
 - (E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;
 - (d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year *that* ended December 31, 1978;
 - (e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;
 - (f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;
 - (g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:
 - (i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and
 - (ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:
 - (A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or
 - (B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2)."

Section 26. Section 15-30-136, MCA, is amended to read:

"15-30-136. Computation of income of estates or trusts — exemption.

(1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the tax year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, ~~as amended~~ (now deleted);

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code ~~of 1954, 26 U.S.C. 163 as amended;~~

(b) taxes paid or accrued within the tax year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion that is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code ~~of 1954, 26 U.S.C. 167, 611, and 642 as amended;~~

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code ~~of 1954, 26 U.S.C. 642(c) as amended;~~

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code ~~of 1954, 26 U.S.C. 212 and 642(g) as amended;~~

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code ~~of 1954, 26 U.S.C. 165 as amended;~~

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code ~~of 1954, 26 U.S.C. 642(d), as amended,~~ except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions are allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the tax year currently required to be distributed to beneficiaries for the year;

(b) any other amounts properly paid or credited or required to be distributed for the tax year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6)."

Section 27. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care.

(3) "Employee" means:

(a) an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana;

(b) an officer of a corporation;

(c) any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance;

(d) all classes, grades, or types of employees including minors and aliens, superintendents, managers, and other supervisory personnel.

(4) "Employer" means:

(a) the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person;

(b) a person who pays \$1,000 or more in wages within the current calendar year;

(c) a person who pays \$1,000 or more in cash for domestic or household service in any quarter during the current calendar year;

(d) any individual or organization, including state government and any of its political subdivisions or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or a limited liability partnership that has filed with the secretary of state, or domestic or foreign corporation or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person who has or had in its employ one or more individuals performing services for it within this state; or

(e) any person found to be an employer under Title 39, chapter 51, for unemployment insurance purposes is considered an employer for state income tax withholding purposes.

(5) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(6) "Lookback period" means the 12-month period ending the preceding June 30.

(7) (a) "Wages", unless specifically exempted under subsection (7)(b), means all remuneration for services performed by an employee for the employer, including the cash value of all remuneration paid in any medium other than cash, and includes but is not limited to the following:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and 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; and

(iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) compensation in the form of meals and lodging, provided the compensation is not includable in gross income for state individual income tax purposes;

(iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002(40)(A), to a qualified individual employee;

(iv) payments made by an employee to any group plan or program to the extent that the payments are not taxable for state income tax purposes;

(v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are covered by 26 U.S.C. 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging; or

(vi) payments that may not be taxed under federal law. (Subsection (7)(b)(v) terminates on occurrence of contingency—sec. 3. Ch. 634, L. 1983.)”

Section 28. Section 15-30-301, MCA, is amended to read:

“15-30-301. (Temporary) Information agents’ duties. (1) Every information agent shall make a return to the department of complete information concerning the following distributions made for any individual during the tax year upon which no withholding tax has been deducted:

(a) sums in excess of \$10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code, ~~of 1965 or as that section may be amended 26 U.S.C. 6049~~, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code, ~~of 1965 or as that section may be amended 26 U.S.C. 401(c)(3)~~;

(b) all interest income in excess of \$10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

(c) interest, other than that specified in subsections (1)(a) and (1)(b), rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of \$600, except interest coupons payable to the bearer;

(d) proceeds from real estate transactions that under rules or regulations of the ~~internal revenue service~~ *United States department of the treasury* are required to be reported.

(2) The return ~~should~~ *must* be made under the regulations and in the form and manner prescribed by the department. For ease of reporting, the form ~~should~~ *must* be identical to the comparable federal form or the department may allow submission of a copy of the federal form or submission by magnetic media or in electronic format.

(3) Notwithstanding the provisions of 15-30-321, an information agent who fails to file a return under the provisions of subsection (1)(d) is subject only to a penalty of \$50 a return. (Terminates December 31, 2004—sec. 4, Ch. 461, L. 2001.)

15-30-301. (Effective January 1, 2005) Information agents' duties.

(1) Every information agent shall make a return to the department of complete information concerning the following distributions made for any individual during the taxable year upon which no withholding tax has been deducted:

(a) sums in excess of \$10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code, ~~of 1965 or as that section may be amended, 26 U.S.C. 6049~~, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code, ~~of 1965 or as that section may be amended 26 U.S.C. 401(c)(3)~~;

(b) all interest income in excess of \$10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

(c) interest, other than that specified in subsections (1)(a) and (1)(b), rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of \$600, except interest coupons payable to the bearer.

(2) The return ~~should~~ *must* be made under the regulations and in the form and manner prescribed by the department; ~~provided, however, that for~~ *For* ease of reporting, the forms ~~shall~~ *must* be as nearly identical to the comparable federal form as possible."

Section 29. Section 15-31-102, MCA, is amended to read:

"15-31-102. Organizations exempt from tax — unrelated business income not exempt. (1) Except as provided in subsection (3), there may not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or similar organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of the income, less expenses, to an organization that itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code, (26 U.S.C. 991, et seq.), and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that election under federal law, each person who at any time is a shareholder of the corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit, no part of the net income of which inures to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

(n) common trust fund as defined in *section 584(a) of the Internal Revenue Code*, 26 U.S.C. 584(a);

(o) foreign capital depository chartered under the provisions of 32-8-104, 32-8-201, and 32-8-202.

(2) In determining the license fee to be paid under this part, there may not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code, ~~of 1954~~ (26 U.S.C. 512), as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

Section 30. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession

of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or ~~851(h)~~ 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as those sections may be amended or renumbered."

Section 31. Section 15-31-150, MCA, is amended to read:

"15-31-150. Credit for research expenses and research payments.

(1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

(i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

(ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

(iii) special rules in 26 U.S.C. 41(g) do not apply; and

(iv) termination date provided for in 26 U.S.C. 41(h)(1)(B) does not apply.

(2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

(3) The credit allowed under this section may be used as a carryback against taxes imposed under chapter 30 or 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 15 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) "Gross receipts" means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d), but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b), but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. ~~42(b)(2)(C)~~ 41(b)(2)(C), but includes only those supplies used in the conduct of qualified research in Montana.

(e) "Wages" has the meaning provided in 39-51-201 and includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana. For a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that the regulations need to be modified to conform to this section."

Section 32. Section 15-31-404, MCA, is amended to read:

"15-31-404. Offset for license taxes — income tax collected considered license tax. There ~~shall~~ *must* be offset against the corporation

income tax imposed for any period the amount of any tax imposed against ~~it the~~ *corporation* for the same period under parts 1, ~~through~~ 3, and 5 of this chapter. ~~In the event that~~ *If* taxes, interest, and penalties have been or will be assessed against, paid by, or collected from a corporation under this part, ~~which~~ *and* the assessment, payment, or collection should have been made under parts 1, ~~through~~ 3, and 5 of this chapter, ~~such~~ *the* taxes, interest, and penalties ~~shall~~ *must* be considered as having been assessed, paid, or collected under parts 1, ~~through~~ 3, and 5 as of the date they were made.”

Section 33. Section 15-31-405, MCA, is amended to read:

“15-31-405. Information return — period for assessment of tax. When a corporation formerly subject to tax under part 1 of this chapter becomes subject to tax under this part, it shall file an information return for the income year in which the change occurs. The tax for the year in which the change occurs will be assessed under parts 1, ~~through~~ 3, and 5 and not under this part. For years subsequent to the year in which the change occurs, the tax will be assessed under this part.”

Section 34. Section 15-32-405, MCA, is amended to read:

“15-32-405. Exclusion from other tax incentives. If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax credit, including but not limited to the tax credits allowed by 15-30-162 and 15-31-123 through 15-31-125, may be claimed for the investment. Property tax reduction allowed by 15-6-201~~(3)~~(4) may not be applied to a facility for which a credit is claimed pursuant to this part.”

Section 35. Section 15-36-324, MCA, is amended to read:

“15-36-324. (Temporary) Distribution of taxes — rules. (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1999 wells and post-1999 wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as follows:

(i) a total of \$400,000, including the proceeds from subsections (10)(b)(i) and (11)(c)(i), to the coal bed methane protection account established in 76-15-904;

(ii) for the fiscal year ending June 30, 2003, all of the remaining proceeds to the state general fund;

(iii) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iv) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as follows:

(i) a total of \$400,000, including the proceeds from subsections (9)(c)(i) and (11)(c)(i), to the coal bed methane protection account established in 76-15-904;

(ii) for the fiscal year ending June 30, 2003, all of the remaining proceeds to the state general fund;

(iii) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iv) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as follows:

(i) a total of \$400,000, including the proceeds from subsections (9)(c)(i) and (10)(b)(i), to the coal bed methane protection account established in 76-15-904;

(ii) for the fiscal year ending June 30, 2003, all of the remaining proceeds to the state general fund;

(iii) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iv) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred

from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the department.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for

the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the department.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes.

(15) (a) In the event that the board revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board for its expenses.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502. (Terminates June 30, 2011—sec. 10, Ch. 531, L. 2001; sec. 8(2), Ch. 12, Sp. L. August 2002.)

15-36-324. (Effective July 1, 2011) Distribution of taxes — rules. (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred

to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1999 wells and post-1999 wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

- (a) 86.21% to the state general fund;
 - (b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and
 - (c) 8.62% to be distributed as follows:
 - (i) 50% to the resource indemnity trust fund of the ~~nonexpendable trust~~ *permanent* fund type;
 - (ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and
 - (iii) 25% to the orphan share account established in 75-10-743.
- (10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:
- (a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and
 - (b) 62.5% to be distributed as follows:
 - (i) 50% to the resource indemnity trust fund of the ~~nonexpendable trust~~ *permanent* fund type;
 - (ii) 25% to the reclamation and development grants special revenue account established by 90-2-1104; and
 - (iii) 25% to the orphan share account established in 75-10-743.
- (11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:
- (a) 76.8% to the state general fund;
 - (b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and
 - (c) 14.5% to be distributed as follows:
 - (i) 50% to the resource indemnity trust fund of the ~~nonexpendable trust~~ *permanent* fund type;
 - (ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and
 - (iii) 25% to the orphan share account established in 75-10-743.
- (12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.
- (b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.
 - (c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that

levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the department.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the department.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes.

(15) (a) In the event that the board revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board for its expenses.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 36. Section 15-50-205, MCA, is amended to read:

"15-50-205. Tax imposed on gross receipts from public contracts. (1) A public contractor, unless the contractor constructs or works on a federal research facility, shall pay to the department of revenue a license fee in a sum equal to 1% of the gross receipts, as defined in 15-50-101, from public contracts during the income year in which the public contractor receives payment.

(2) The license fee must be computed upon the basis of the entire contract for each separate contract let by any of the public bodies as ~~specified in this section provided for in 15-50-206.~~

Section 37. Section 15-50-206, MCA, is amended to read:

"15-50-206. Withholding license fee from payments — refunds. (1) The prime contractor shall withhold the 1% license fee from payments to subcontractors and inform the department of revenue on prescribed forms of the amount of the 1% license fee in the prime contractor's account to be allocated and transferred to the subcontractor. The notification to transfer portions of the 1% license fee must be filed within 30 days after each payment is made to subcontractors. If any prime contractor fails to file the required allocation and

transfer report at the time required by or under the provisions of this chapter, a penalty computed at the rate of 10% of the 1% license fee withheld from subcontractors is due from the prime contractor.

(2) The state, county, city, or any agency or department thereof, as described in ~~15-50-205~~, of the state, county, or city for whom the contractor is performing public work shall withhold, in addition to other amounts withheld as provided by law, 1% of all payments due the contractor and shall transmit that money to the department of revenue. If the 1% of gross receipts, as defined in 15-50-101, is not withheld as provided, the contractor shall make payment of these amounts to the department within 30 days after the date on which the contractor receives each increment of payment for work performed by the contractor.

(3) Any overpayment of the 1% of gross receipts, as defined in 15-50-101, withheld or paid by any contractor must be refunded by the department of revenue at the end of the income year upon written application."

Section 38. Section 15-70-201, MCA, is amended to read:

"15-70-201. (Temporary) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

~~(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.~~

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) (a) "Gasoline" includes:

(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state.

15-70-201. (Effective on occurrence of contingency) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

~~(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.~~

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10".

(10) (a) "Gasoline" includes:

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) except for alcohol blended into gasohol, any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(11) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(13) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (10) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(14) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(15) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(16) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state. (Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)

15-70-201. (Effective July 1 of fourth year following date of occurrence of contingency) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

~~(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.~~

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) (a) "Gasoline" includes:

(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."

Section 39. Section 15-72-102, MCA, is amended to read:

"15-72-102. Legislative findings and declaration of purpose. (1) The legislature finds that the restructuring of the electric utility industry in Montana implemented by Chapter 505, Laws of 1997, including the unbundling of services and the provision that allows Montana customers to choose their supplier of electricity and related services in a competitive market, renders the existing method of property taxation of the electric utility industry an impediment to competition.

(2) The legislature further finds that the restructuring of the electric utility industry necessitates changes to the existing system of property taxation that include reducing the tax rate applied to electrical generation facilities and imposing a replacement tax in order to:

(a) avoid placing a supplier engaged in the business of generating, supplying, or selling electricity at a competitive advantage or disadvantage;

(b) preserve the revenue base of the existing property tax system for taxing jurisdictions in the state;

(c) minimize the shift in tax burden and the imposition of a higher tax burden on consumers of electricity; and

(d) minimize additional administrative costs and the burden of compliance.

(3) The legislature further finds that a reduction in the property tax rates applied to electrical generation facilities must be replaced by a wholesale energy ~~transmission~~ transaction tax imposed on each kilowatt hour of electricity transmitted in the state.

(4) The legislature further finds that existing property tax rates applied to electrical transmission and distribution systems are appropriate for a regulated function.

(5) The legislature therefore declares that there is a compelling public need to modify the existing system of property taxation of electrical generation facilities and to impose a wholesale energy transaction tax on kilowatt hours of electricity transmitted in the state to ensure competitive neutrality and to provide replacement revenue to taxing jurisdictions in the state.”

Section 40. Section 16-11-101, MCA, is amended to read:

“16-11-101. Legislative intent. The legislature hereby declares that its intent in enacting 16-11-111 is to enable those who are subject to the taxes imposed by the federal tax laws to avail themselves of the deductions respecting state and local taxes specified in section 164 of the ~~federal~~ Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 164, as amended*, in computing their taxable income.”

Section 41. Section 17-4-106, MCA, is amended to read:

“17-4-106. Agency owed debt to receive all money collected — exception. (1) All money collected by the department on debts transferred to the department by the various agencies, except funds collected under 17-4-103(3), must be deposited to the account or fund of the agency to which the debt was originally owed. A county shall apply a delinquent personal property tax collection by the department to the payment of the taxpayer’s most delinquent personal property taxes or portion of the taxes.

(2) Funds collected under 17-4-103(3) must be deposited in an account in the internal service fund for the cost of assistance of debt collection by the department. ~~Except as provided in subsection (3), funds~~ Funds deposited in excess of the amount appropriated for operation of the debt collection program must be carried forward into the next fiscal year for operation of the debt collection program. Any excess carried forward into the next fiscal year must be used to reduce the designated percentage of the collected proceeds charged to the various agencies.

~~(3) The amount of \$400,000 is transferred from the internal service fund referred to in subsection (2) to the general fund prior to June 30, 2003.”~~

Section 42. Section 17-5-703, MCA, is amended to read:

“17-5-703. (Temporary) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Beginning July 1, 1993, and ending June 30, ~~2013~~ 2016, the state treasurer shall quarterly transfer to the treasure state endowment fund 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) Beginning July 1, 1999, and ending June 30, ~~2013~~ 2016, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund.

17-5-703. (Effective July 1, 2003) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Until June 30, ~~2013~~ 2016, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) Until June 30, ~~2013~~ 2016, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)

17-5-703. (Effective July 1, 2016) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund; and

(e) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Until June 30, ~~2013~~ 2016, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund."

Section 43. Section 17-5-1102, MCA, is amended to read:

"17-5-1102. Definitions. As used in this part, the following definitions apply:

(1) (a) "Authorized officer" means, with respect to any certificated public obligation:

(i) an individual whose signature to the certificated public obligation is required or permitted; or

(ii) an individual ~~whom~~ *who may be permitted by an authorized officer may*, either alone or with the concurrence of another or others, ~~permit~~ to affix ~~his~~ *the individual's* signature to the certificated public obligation and who is so permitted in writing by the authorized officer with any required concurrence.

(b) "Authorized officer" means, with respect to any uncertificated public obligation, any individual referred to in this subsection (1) as an authorized officer with respect to a certificated public obligation of the same class or series.

(2) "Certificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) represented by an instrument; and

(c) either one of a class or series or by its terms *is* divisible into a class or series of obligations.

~~(3) "Code" means the Internal Revenue Code of 1954, as amended.~~

~~(4)~~(3) "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official, or official body.

~~(5)~~(4) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

~~(6)~~(5) "Financial intermediary" means a bank, broker, clearing corporation, or trust company or the nominee of any of them or other person or nominee ~~which~~ *that* in the ordinary course of its business maintains public obligation accounts for its customers.

(6) "*Internal Revenue Code*" has the meaning provided in 15-30-101.

(7) "Issuer" means a public entity that:

(a) executes a certificated public obligation to evidence its duty to perform an obligation represented by the certificated public obligation;

(b) undertakes to perform an obligation that is an uncertificated public obligation; or

(c) becomes responsible for or in place of a public entity described as an issuer in this subsection (7).

(8) "Obligation" means an agreement of an issuer to pay principal and interest and includes a share, participation, or other interest in ~~any such~~ *the* agreement.

(9) "Official actions" means the actions by statute, order, ordinance, resolution, contract, or other authorized means by which the issuer provides for issuance of a public obligation.

(10) "Official or official body" means:

(a) the officer or body that is empowered under the laws of one or more states, including this state, to provide for original issuance of a public obligation of the issuer by defining the obligation and its terms, conditions, and other incidents;

(b) the successor or successors of ~~any such~~ *the* official or official body; and

(c) ~~such~~ *any* other person or group of persons ~~as who~~ are assigned duties of ~~such~~ *the* official or official body under applicable law ~~from time to time~~.

(11) "Original issuance" means the first transfer of a public obligation by an issuer to a purchaser.

(12) "Public entity" means any entity, department, or agency that is empowered under the laws of one or more states, including this state, to issue obligations, any interest with respect to which may under any provision of law be provided an exemption from the income tax referred to in the ~~code~~ *Internal Revenue Code*. The term "~~public entity~~" may include this state, a political subdivision, a municipal corporation, a state university or college, a school district or other special district, a joint agreement entity, a public authority, a public trust, a nonprofit corporation, or any other organization.

(13) "Public obligation" means either a certificated or an uncertificated public obligation.

(14) "System of registration" and its variants means a plan:

(a) with respect to a certificated public obligation, that provides that:

(i) the certificated public obligation specify a person entitled to the public obligation or the rights it represents; and

(ii) transfer of the certificated public obligation may be registered upon books maintained for that purpose by or on behalf of the issuer; and

(b) with respect to an uncertificated public obligation, that provides that transfer of the uncertificated public obligation be registered upon books maintained for that purpose by or on behalf of the issuer.

(15) "Uncertificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) not represented by an instrument; and

(c) either one of a class or series or by its terms divisible into a class or series of obligations."

Section 44. Section 17-5-1103, MCA, is amended to read:

"17-5-1103. Declarations of state interest — purposes. (1) Sections 103 and 103A of the ~~code~~ *Internal Revenue Code, 26 U.S.C. 103 and 103A*, provide that interest with respect to certain obligations may not be exempt from the income tax if they are not in registered form. It is therefore a matter of state concern that public entities be authorized to provide for the issuance of obligations in ~~such~~ *registered* form. It is a purpose of this part to authorize all public entities to establish and maintain a system pursuant to which obligations may be issued in registered form within the meaning of sections 103 and 103A of the ~~code~~ *Internal Revenue Code, 26 U.S.C. 103 and 103A*.

(2) Obligations have traditionally been issued in bearer rather than in registered form, and a change from bearer to registered form will significantly affect the relationships, rights, and duties of issuers of and the persons that deal with obligations and ~~by such effect, may consequently affect~~ the costs. ~~Such~~ *The* effects will impact the various issuers and varieties of obligations differently, depending on their legal and financial characteristics, their markets, and their adaptability to recent and prospective technological and organizational developments. It is therefore a matter of state concern that public entities be provided flexibility in the development of systems of registration and control over system incidents, ~~so as in order to accommodate differing impacts~~. It is a purpose of this part to provide for the establishment and maintenance, and amendment from time to time, of differing systems of registration of obligations, including system incidents, ~~so as in order to accommodate the differing impacts upon issuers and varieties of obligations.~~"

Section 45. Section 17-5-1111, MCA, is amended to read:

“17-5-1111. System of registration. (1) Each issuer is authorized to establish and regularly maintain a system of registration with respect to each public obligation that it issues. The system may be either a system pursuant to which only certificated public obligations are issued or a system pursuant to which both certificated and uncertificated public obligations are issued. The issuer may discontinue and reinstitute either system from time to time.

(2) The system must be established and regularly maintained or amended, discontinued, or reinstated for the issuer by the official or official body.

(3) The system must be described in the official actions that provide for original issuance and in subsequent official actions providing for amendments and other matters from time to time. ~~Such~~ The description may be by reference to a program of the issuer that is established by the official or official body.

(4) The system must define the method or methods by which transfer of the public obligations is effective with respect to the issuer, which method or methods are exclusive (substantial compliance being essential to a valid transfer) and by which payment of principal and any interest must be made. The system may permit the issuance of public obligations in any denomination to represent several public obligations of smaller denominations. The system may also provide for the form of any certificated public obligations, for differing record and payment dates, for varying denominations, and for accounting, canceled certificate destruction, and other incidental matters.

(5) Under a system pursuant to which both certificated and uncertificated public obligations are issued, both types of public obligations may be regularly issued or one type may be regularly issued and the other type issued only under described circumstances or to particular described categories of owners. Under a system pursuant to which uncertificated public obligations are regularly issued, provisions may be made for registration of pledges and releases.

(6) The system may include covenants of the issuer as to amendments, discontinuances, and reinstatements and the effect of ~~such those covenants~~ on the exemption of interest from the income tax provided for by the ~~code~~ *Internal Revenue Code*.

(7) If the effect of a conversion from one of the forms of public obligations provided for in this part to a form not provided for in this part is that interest will continue to be exempt from the income tax provided for by the ~~code~~ *Internal Revenue Code*, this part does not preclude ~~such that~~ conversion.

(8) To the extent not inconsistent with this part, the rights provided by other laws with respect to obligations in other forms must be provided with respect to obligations in forms that may be used under this part.”

Section 46. Section 17-7-140, MCA, is amended to read:

“17-7-140. Reduction in spending. (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(b), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium. An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the

board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(b) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time that the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) Reductions in spending for the following may not be directed by the governor:

- (a) payment of interest and principal on state debt;
- (b) the legislative branch;
- (c) the judicial branch;
- (d) the school BASE funding program, including special education; and
- (e) salaries of elected officials during their terms of office.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than 2% of the general fund appropriations for the second fiscal year of the biennium. In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid, and anticipated reversions.

(b) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in

the revenue estimate established pursuant to ~~5-18-107~~ 5-5-227, the budget director shall notify the revenue and transportation interim committee of the estimated amount. Within 20 days of notification, the revenue and transportation interim committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue and transportation interim committee prior to certifying a projected general fund budget deficit to the governor."

Section 47. Section 19-1-102, MCA, is amended to read:

"19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) ~~The term "employee" includes~~ "Employee" means an elective or appointive officer or employee of the state or a political subdivision of the state.

(2) "Employee tax" means the tax imposed by section 3101 of the Internal Revenue Code, 26 U.S.C. 3101, as amended.

~~(2)(3)~~ (a) ~~The term "employment"~~ "Employment" means any service performed by an employee in the employ of the state or any political subdivision of the state for the employer, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute ~~"employment"~~ employment as defined in the Social Security Act; or

(ii) service that under the Social Security Act may not be included in an agreement between the state and the secretary of health and human services entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term ~~"employment"~~ employment.

(c) Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term ~~"employment"~~ employment if and when the governor issues, with respect to the service, a certificate to the secretary of health and human services pursuant to 19-1-304.

~~(3)(4)~~ ~~The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954, as the codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954 and as the codes may from time to time be amended.~~

~~(4)(5)~~ The term ~~"political subdivision"~~ "Political subdivision" means an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but only if the instrumentality is a ~~juristic~~ legally constituted entity that is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the ~~juristic~~ entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, ~~such as~~ including but not limited to school districts and housing authorities.

~~(5)(6)~~ The term ~~"secretary"~~ "Secretary of health and human services" means the secretary of the United States department of health and human services. The term includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act with respect

to coverage under that act of employees of states and their political subdivisions; and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any function.

~~(6)~~(7) ~~The term~~ "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant to the act, as the act has been and may be amended.

~~(7)~~(8) ~~The term "state~~ "State agency" means the department of administration provided for in 2-15-1001.

~~(8)~~(9) ~~The term "wages"~~ "Wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration that, even if it were for "employment" *employment* within the meaning of the Federal Insurance Contributions Act, would not constitute "~~wages~~" *wages* within the meaning of that act."

Section 48. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Benefit" means:

(a) the service or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Covered employment" means employment in a covered position.

(13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(14) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate service or disability retirement or survivorship benefits under a defined benefit retirement plan.

(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(17) "Department" means the department of administration.

(18) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(19) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(20) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(21) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(22) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

- (b) there are a limited number of employees to perform the element; or
- (c) the element is highly specialized.

(23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(24) "Inactive member" means a member who is not an active or retired member.

(25) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999 has the meaning provided in 15-30-101.

(26) "Member" means either:

- (a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

- (b) a person with a retirement account in the defined contribution plan.

(27) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(28) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement plan.

(29) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at rates set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement plan.

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and employee contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(37) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service, early, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

(38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(40) "Service" means employment of an employee in a position covered by a retirement system.

(41) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(42) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(43) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(44) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

(45) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(46) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts: the member's contribution account, the vested portion of the employer's contribution account, and the member's account for other contributions.

(47) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(48) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary."

Section 49. Section 19-2-405, MCA, is amended to read:

"19-2-405. Employment of actuary — biennial investigation and valuation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical advisor of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make a biennial actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.

(4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.

(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made to the defined benefit plan pursuant to 19-3-2117 and 19-21-203~~(5)(b)~~.

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems and plans.

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter."

Section 50. Section 19-2-408, MCA, is amended to read:

"19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) (a) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system's defined benefit plan, except as otherwise provided in this section. The board shall compute the administrative expenses attributable to each retirement system or plan administered by the board and transfer that amount from each retirement system's or plan's pension trust fund to the pension trust fund of the public employees' retirement system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for

expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund.

(b) The total administrative expenses of the board, including the administration of the volunteer firefighters' pension plan, may not exceed 1.5% of the total defined benefit plan retirement benefits paid.

(3) For purposes of calculating the percentage specified in subsection (2)(b), administrative expenses do not include:

(a) expenditures to purchase intangible assets for plan administration;

(b) expenses of the defined contribution plan; or

(c) expenditures of funds allocated under 19-3-112(1)(b) ~~or (1)(c)~~ to the education fund established in 19-3-112(1)(a).

(4) The administrative expenses of the defined contribution plan must be paid, as provided in 19-3-2105, from assets of the defined contribution plan."

Section 51. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. Allocation of contributions and forfeitures. (1) Each plan member's retirement account must be credited with the employer contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective date, of the employer contributions under 19-3-316, an amount equal to:

(a) 4.19% of compensation must be allocated to the member's retirement account;

(b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate; and

(c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b).

(3) Subject to adjustment by the board pursuant to 19-3-2121(6) and beginning on the plan's effective date, of the employer contributions under 19-3-316, 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141.

(4) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

Section 52. Section 19-5-902, MCA, is amended to read:

"19-5-902. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the

increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section.

The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-5-901 remains valid. The decision of a member who elected not to participate under 19-5-901 may be reversed under this section."

Section 53. Section 19-6-711, MCA, is amended to read:

"19-6-711. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section.

The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-6-710 remains valid. The decision of a member who elected not to participate under 19-6-710 may be reversed under this section.”

Section 54. Section 19-9-1013, MCA, is amended to read:

“19-9-1013. Extended election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient’s benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient’s benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient’s benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit’s commencement date is at least ~~36~~ 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section.

The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-9-1009 or 19-9-1010 remains valid. The decision of a member who elected not to participate under 19-9-1009 and 19-9-1010 may be reversed under this section.”

Section 55. Section 19-9-1204, MCA, is amended to read:

“19-9-1204. Eligibility — participation criteria — membership status — service interruptions. (1) Any member eligible to retire under 19-9-801 ~~(2)~~ (1) is eligible and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant remains a member of the retirement system, but may not receive membership service or service credit in the system for the duration of the member’s DROP period.

(5) If participation is interrupted by military service or disability and the participant has not received any distribution from the DROP, then the duration of the absence may not be included in calculating the DROP period.”

Section 56. Section 19-13-1011, MCA, is amended to read:

“19-13-1011. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient’s benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient’s benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient’s benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit’s commencement date is at least ~~36~~ 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-13-1010 remains valid. The decision of a member who elected not to participate under 19-13-1010 may be reversed under this section.”

Section 57. Section 19-20-101, MCA, is amended to read:

“19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accumulated contributions” means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member’s individual account in the annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) “Actuarial equivalent” means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) “Average final compensation” means the average of a member’s earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member’s retirement, the amounts

may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

(9) "Internal Revenue Code" ~~means the federal Internal Revenue Code of 1954 or 1986, as applicable to a governmental plan, as the code provided on July 1, 1999~~ *has the meaning provided in 15-30-101.*

(10) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without actuarial or similar reduction in the benefits because of retirement before a specified age.

(12) "Part-time service" means service that is less than full-time or that totals less than 180 days in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

(14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, *26 U.S.C. 457(f)*.

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit.

(23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 58. Section 19-21-203, MCA, is amended to read:

"19-21-203. Contributions — supplemental and plan choice rate contributions. The following provisions apply to program participants not otherwise covered under 19-21-214:

(1) Each program participant shall contribute an amount equal to the member's contribution required under 19-20-602. The board of regents shall contribute an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation.

(2) (a) The board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) The sum of the participant's and employer's contributions made under subsection (2)(a) must remain at 12% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 403(b), as amended*, or by employer pickup under section 414(h)(2) of that code, *26 U.S.C. 414(h)(2), as amended*.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the board of regents' contribution to the designated company or companies for the benefit of the participant.

(5) The board of regents shall make the supplemental contributions to the teachers' retirement system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system."

Section 59. Section 19-21-214, MCA, is amended to read:

“19-21-214. Contributions and allocations for employees in positions covered under the public employees’ retirement system. (1) The contribution rates for employees in positions covered under the public employees’ retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member’s contribution rate must be the rate provided in 19-3-315; and

(b) the employer’s contribution rate must be the rate provided in 19-3-316.

(2) Subject to subsection (3), the employer’s contribution under subsection (1)(b) must be allocated as follows:

(a) 4.49% of compensation must be allocated to the participant’s program account;

(b) 2.37% of compensation must be allocated to the defined benefit plan under the public employees’ retirement system as the plan choice rate; and

(c) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112~~(1)(c)~~(1)(b).

(3) The allocations under subsection (2) are subject to adjustment by the public employees’ retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121.”

Section 60. Section 19-50-102, MCA, is amended to read:

“19-50-102. Deferred compensation programs permitted — rules. (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code, ~~of 1954~~ (26 U.S.C. 457), as amended ~~or superseded~~, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of the employee’s compensation to one or more of the investment options provided in subsection (4) for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee’s annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The board or an appropriate officer of a political subdivision shall from time to time select the type of investment options and the financial institutions or entities in which state or political subdivision employee deferred compensation plan funds may be invested. The board or an appropriate officer of a political subdivision shall notify affected plan members of potential changes in investment options and financial institutions before the changes are made. The investment options and entities may include:

(a) a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund must be credited to the fund. These state-invested funds may be commingled with other

state investment funds, but separate accounting must be maintained. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner;

(d) investment funds managed pursuant to investment services contracts maintained by the board or an appropriate officer of a political subdivision with investment managers registered with the United States securities and exchange commission;

(e) mutual funds provided through contracts maintained by the board or an appropriate officer of a political subdivision with mutual fund companies regulated by the United States securities and exchange commission; or

(f) a combination of the items in subsections (4)(a) through (4)(e).

(5) The deferred compensation plan funds invested pursuant to this section and the income from those funds must be held in a trust, custodial account, or insurance contract for the exclusive benefit of participants and their beneficiaries.

(6) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(7) The board or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter."

Section 61. Section 19-50-103, MCA, is amended to read:

"19-50-103. No effect on other retirement programs — taxes deferred. The deferred compensation program established by this chapter ~~shall exist and serve~~ is in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code, ~~of 4954 26 U.S.C. 403(b), as amended,~~ established by the state or a political subdivision, and no deferral of income under the deferred compensation program ~~shall~~ may affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program ~~shall not be~~ is not subject to taxation until distribution is actually made to the participant or ~~his~~ the participant's beneficiary because of separation from service, retirement, or unforeseeable emergency. For purposes of this chapter, any qualified private pension plans now in existence ~~shall qualify~~ qualifies."

Section 62. Section 20-9-344, MCA, is amended to read:

"20-9-344. Duties of board of public education for distribution of BASE aid. (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. ~~To this end, the~~ The board of public education shall:

(a) shall adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) ~~have the power to~~ may require reports from the county superintendents, ~~budget boards,~~ county treasurers, and trustees as it considers necessary; and

(c) shall order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in 20-9-347(2), the BASE aid payment must be distributed according to the following schedule:

(a) from August to October of the school fiscal year, 10% of the direct state aid to each district;

(b) from December to April of the school fiscal year, 10% of the direct state aid to each district;

(c) in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134;

(d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and

(e) in June of the school fiscal year, the remaining payment to each district of direct state aid.

(6) The distribution provided for in subsection (5) must occur by the last working day of each month."

Section 63. Section 20-10-205, MCA, is amended to read:

"20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils. The trustees of any school district receiving federal reimbursement in lieu of taxes may request the allocation of a portion of ~~such~~ those federal funds to the school food services fund to provide free meals for federally connected, indigent pupils when the pupils are declared eligible. In granting the request, the county superintendent shall comply with the following procedures:

(1) The indigency must be certified by the ~~county department of welfare~~ *local office of public assistance*, assisted by a committee of three composed of the county superintendent, a representative of the county health department, and an authorized representative of the district.

(2) A certified, detailed claim for the amount of the federal reimbursement in lieu of taxes that is to be allocated to the school food services fund ~~shall~~ *must* be filed by the district with the county superintendent. The county superintendent shall confirm or adjust the amount of the claim by:

(a) determining that the pupils included on the claim have been declared indigent under subsection (1);

(b) determining the number of meals provided the indigent pupils by the school food services;

(c) determining the price ~~per~~ *for each* meal *that is* charged to the nonindigent pupil; and

(d) multiplying the number of meals provided to indigent pupils by the price ~~per~~ *for each* meal.

(3) After the county superintendent's confirmation or adjustment of the claim, ~~he~~ *the county superintendent* shall notify the district and the county treasurer of the approved amounts for allocation to the school food services fund. The district shall deposit the approved amount in the school food services fund on receipt of the succeeding federal payment in lieu of taxes."

Section 64. Section 20-25-301, MCA, is amended to read:

"20-25-301. Regents' powers and duties. The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings with the university system, and:

(1) must have general control and supervision of the units of the Montana university system, which is considered for all purposes one university;

(2) shall adopt rules for its own government that are consistent with the constitution and the laws of the state and that are proper and necessary for the execution of the powers and duties conferred upon it by law;

(3) shall provide, subject to the laws of the state, rules for the government of the system;

(4) shall grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion to confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of the institutions;

(5) shall keep a record of its proceedings;

(6) must have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(7) must receive from the board of land commissioners, from other boards or persons, or from the government of the United States all funds, ~~incomes~~ *income*, and other property *that* the system may be entitled to and use and appropriate the property for the specific purpose of the grant or donation;

(8) must have general control of all receipts and disbursements of the system;

(9) shall appoint a president or chancellor and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

(10) shall confer upon the executive board of each of the units of the system authority that may be considered expedient relating to immediate control and management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty;

(11) shall confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;

(12) shall prevent unnecessary duplication of courses at the units of the system;

(13) shall appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who is the state geologist, and appoint any other necessary assistants and employees and fix their compensation-;

(14) shall supervise and control the agricultural experiment station, along with any executive or subordinate board or authority that may be appointed by the governor with the advice and consent of the regents;

(15) shall adopt a seal bearing on its face the words "Montana university system", which must be affixed to all diplomas and all other papers, instruments, or documents that may require it;

(16) shall ensure an adequate level of security for data ~~and information technology resources~~, as defined in 2-15-102, within the state university system. In carrying out this responsibility, the board of regents shall, at a minimum, address the responsibilities prescribed in 2-15-114.

(17) shall offer courses in vocational-technical education of a type and in a manner considered necessary or practical by the regents."

Section 65. Section 20-25-427, MCA, is amended to read:

"20-25-427. Allocation of indirect cost reimbursements. Any reimbursement for indirect costs associated with a grant to or contract with the Montana university system or any of its units is allocated to the designated subfund of the ~~university~~ current fund, as provided in 17-2-102, for distribution to the unit receiving the grant or under the contract."

Section 66. Section 23-1-105, MCA, is amended to read:

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

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

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an

adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is not subject to the deposit requirements of 17-6-105. The department shall deposit money collected under this section within a reasonable time after receipt.

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(1)(b)(i)(2)(a), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection."

Section 67. Section 23-2-809, MCA, is amended to read:

"23-2-809. Duplicate decal. If a decal required in 23-2-804 indicating that the off-highway vehicle fee has been paid for the current year is lost, mutilated, or becomes illegible, the person to whom it was issued shall immediately apply for and obtain a duplicate decal upon payment of a fee of \$5 to the county treasurer, who shall distribute the fee as provided in ~~23-2-804(3)~~ 23-2-803."

Section 68. Section 25-13-402, MCA, is amended to read:

"25-13-402. How writ executed. (1) (a) The sheriff or levying officer shall, subject to subsection (6), execute the writ against the property of the judgment debtor no later than 120 days after receipt of the writ by:

- (i) levying on a sufficient amount of property, if there is sufficient property;
- (ii) collecting or selling the things in action; and

(iii) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally serving the writ upon an officer or supervising employee of the ~~entity~~ *third party* or ~~other~~ *upon a* department or person designated by the third party or by *-serving the writ by* mail, as provided in subsection (1)(b)(ii).

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer, ~~or~~ *supervising employee of the third party, or other* to a department or person designated by the third party. If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ ~~shall~~ *is required to* forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ ~~will~~ *must* be considered served on the date and time that the writ is received by the officer,

supervising employee, or designee of the third party, but no later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail, as provided in subsection (1)(b)(ii).

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 120 days until the judgment is satisfied or the writ expires.

(6) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service through the expiration of the writ.

(b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ and notice.

(c) Except as provided in subsection (7), multiple levies served under this subsection (6) have priority according to the date and time of service upon the employer.

(d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same manner provided for in 25-13-404.

(7) Nothing in this section is intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions."

Section 69. Section 27-1-732, MCA, is amended to read:

"27-1-732. Immunity of nonprofit corporation officers, directors, and volunteers. (1) An officer, director, or volunteer of a nonprofit corporation is not individually liable for any action or omission made in the course and scope of the officer's, director's, or volunteer's official capacity on behalf of the nonprofit corporation. This section does not apply to liability for willful or wanton misconduct. The immunity granted by this section does not apply to the liability of a nonprofit corporation.

(2) For purposes of this section, "nonprofit corporation" means:

(a) an organization exempt from taxation under section 501(c) of the Internal Revenue Code, ~~of 1954 26 U.S.C. 501(c), as amended;~~

(b) a corporation or organization that is eligible for or has been granted ~~by the department of revenue~~ tax-exempt status *by the department of revenue* under the provisions of 15-31-102; or

(c) the comprehensive health association created by 33-22-1503.”

Section 70. Section 31-1-704, MCA, is amended to read:

“31-1-704. Scope. (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to:

(a) banks, savings and loan associations, credit unions, or other state or federally regulated financial institutions;

(b) retail sellers who cash checks incidental to or independent of a sale and who do not charge more than \$2 per check for the service; or

(c) a collection agency ~~licensed to do~~ *doing* business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender.”

Section 71. Section 31-2-106, MCA, is amended to read:

“31-2-106. Exempt property — bankruptcy proceeding. An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). An individual may exempt from the property of the estate in any bankruptcy proceeding:

(1) that property exempt from execution of judgment as provided in 19-2-1004, 19-18-612, 19-19-504, 19-20-706, 19-21-212, Title 25, chapter 13, part 6, 33-7-522, 33-15-512 through 33-15-514, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245;

(2) the individual’s right to receive unemployment compensation and unemployment benefits; and

(3) the individual’s right to receive benefits from or interest in a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy ~~which~~ *that* exceeds 15% of the individual’s gross income for that 1-year period, unless:

(a) the plan or contract was established by or under the auspices of an insider that employed the individual at the time the individual’s rights under the plan or contract arose;

(b) the benefit is paid on account of age or length of service; and

(c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code, ~~of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409).~~”

Section 72. Section 33-20-1317, MCA, is amended to read:

“33-20-1317. Disclosure of information to viatical settlement purchasers. (1) A viatical settlement provider shall disclose the information specified in this section to a viatical settlement purchaser prior to the date on which the parties sign the viatical settlement purchase agreement.

(2) The viatical settlement purchaser shall date and sign the information disclosure. The viatical settlement provider shall provide a copy of the information disclosure to the viatical settlement purchaser.

(3) The information disclosure must include the following:

(a) that the viatical settlement purchaser will not receive payment until the insured dies;

(b) that the actual annual rate of return on a viatical settlement purchase agreement is dependent upon an accurate projection of the insured's life expectancy and the actual date of the insured's death and that an annual guaranteed rate of return is not determinable;

(c) that the viatical insurance contract is not a liquid purchase since it is impossible to predict the exact timing of its maturity, that the funds are probably not available until the death of the insured, and that there is not an established secondary market for the resale of viatical settlement products by the viatical settlement purchaser;

(d) that the viatical settlement purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical settlement investment;

(e) (i) that the viatical settlement purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement, and that these payments may reduce the viatical settlement purchaser's return and may continue beyond the insured's projected life expectancy; and

(ii) if a party other than the viatical settlement purchaser is responsible for the payment, that the name of that party must also be disclosed;

(f) the amount of the premium that a purchaser is required to pay, if applicable;

(g) that the viatical settlement purchaser may be responsible for payment of the insurance premium or other costs related to the policy if the insured returns to health;

(h) the amount of any fees or other expenses to be charged to the viatical settlement purchaser;

(i) whether or not the viatical settlement purchaser is entitled to a refund of all or part of the investment under the viatical settlement purchase agreement if the policy is later determined to be void;

(j) that group policies:

(i) may contain limitations on conversion rights;

(ii) may require additional premiums to be paid if the group policy is converted; and

(iii) may be terminated and replaced by another group policy, with benefits under the new policy that may be substantially less than those in the original coverage;

(k) for group policies, the name of the party responsible for the payment of any additional premiums;

(l) that there are risks associated with policy contestability, including the risk that the viatical settlement purchaser may not have a claim or may have

only a partial claim to death benefits if the insurer rescinds the policy within the contestability period;

(m) whether or not the viatical settlement purchaser will be the beneficiary or owner of the policy and, if the viatical settlement purchaser is the beneficiary, the special risks associated with beneficiary status, including the risk that the beneficiary may be changed;

(n) a description of:

(i) the experience and qualifications of the person who has determined the life expectancy of the insured, such as in-house staff, independent physicians, or specialty firms that weigh medical and actuarial data;

(ii) the information on which the projection of life expectancy is based; and

(iii) the relationship of the person who has made the determination of life expectancy to the viatical settlement provider, if any;

(o) all of the life expectancies obtained in the process of determining the price paid to the ~~viator~~ *policyholder or certificate holder*;

(p) a description and amount of any loan or other encumbrance against or in connection with the policy; and

(q) that the viatical settlement purchaser is encouraged to consult with an attorney, accountant, or financial planner who is not affiliated with the viatical settlement broker or viatical settlement provider prior to purchase."

Section 73. Section 37-7-602, MCA, is amended to read:

"37-7-602. Definitions. As used in this part, the following definitions apply:

(1) "Blood" means whole blood collected from a single donor and processed either for transfusion or for further manufacturing.

(2) "Blood component" means that part of blood separated by physical or mechanical means.

(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(4) "Manufacturer" means a person or entity engaged in the manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug or device.

(5) "Prescription drug" has the same meaning as provided in 37-7-101.

(6) (a) "Wholesale drug distribution" means distribution of prescription drugs to persons other than a consumer or patient.

(b) The term does not include:

(i) intracompany sales;

(ii) the purchase or other acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of group purchasing organizations;

(iii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 501(c)(3), as amended*, to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For purposes of this subsection (6)(b)(iv), "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

(v) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For the purposes of this subsection (6)(b)(v), "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.

(vi) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(vii) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(viii) the sale, purchase, or trade of blood and blood components intended for transfusion.

(7) "Wholesale drug distributor" means a person or entity engaged in wholesale distribution of prescription drugs, including but not limited to manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses), independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions."

Section 74. Section 37-24-104, MCA, is amended to read:

"37-24-104. Exemptions. Nothing in this chapter prevents or restricts the practice, services, or activities of:

(1) a person licensed in this state under any other law or certified or registered as a member of an occupational or professional group other than occupational therapy from engaging in the profession or occupation for which ~~he~~ *the person* is licensed, certified, or registered;

(2) a person who provides treatment, teaches living skills, designs orthotic or prosthetic devices, administers tests, or engages in other activities described in 37-24-103 but does not represent ~~himself as~~ *to the public that the person is* an occupational therapist;

(3) a person employed as an occupational therapist or occupational therapy assistant by an institution or agency of the federal government;

(4) a person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited institution or under an approved educational program if the person is designated by a title that clearly indicates ~~his~~ *the person's* status as a student or trainee;

(5) a person fulfilling the supervised fieldwork experience requirements of 37-24-303 if the experience constitutes a part of the experience necessary to meet the requirements of that section;

(6) a person performing occupational therapy services in the state if these services are performed for no more than 10 days in a calendar year in association with an occupational therapist licensed under this chapter, provided that:

(a) the person is licensed under the law of another state that has licensure requirements at least as stringent as the requirements of this chapter; or

(b) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA), established by the ~~American occupational therapy certification board (AOTCB)~~ *national board for certification in occupational therapy, inc. (NBCOT)*; or

(7) a person employed as an occupational therapy aide.”

Section 75. Section 37-24-303, MCA, is amended to read:

“37-24-303. Requirements for licensure. (1) To be eligible for licensure by the board as an occupational therapist or an occupational therapy assistant, the applicant shall:

(a) present evidence of having successfully completed the academic requirements of an educational program recognized by the board for the license sought;

(b) submit evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where ~~he~~ *the person* completed the academic requirements or by a nationally recognized professional association;

(c) submit evidence of having been certified by the ~~American occupational therapy certification board (AOTCB)~~ *national board for certification in occupational therapy, inc. (NBCOT)*; and

(d) pass an examination as provided for in 37-24-304.

(2) The supervised fieldwork experience requirement for an occupational therapist is a minimum of 6 months. The supervised fieldwork experience requirement for an occupational therapy assistant is a minimum of 2 months.”

Section 76. Section 39-10-204, MCA, is amended to read:

“39-10-204. (Temporary) Authorized services. The authorized services provided under the Montana summer youth employment program include:

(1) work experience, which includes planned, structured, work-based learning experiences that may occur in a nonprofit or for-profit, private or public sector workplace for a limited period of time. To the extent feasible, work experience must include contextual learning opportunities that integrate the development of general competencies with the development of academic skills.

(2) basic and remedial education and preemployment and work maturity skills, including but not limited to the job corps, ~~the work opportunity readiness component of the FAIM project, as defined in 53-2-902,~~ youth corps programs, alternative or secondary schools, tutoring, mentoring, or study skills training, and instruction leading to the completion of secondary school, including dropout prevention strategies and leadership development opportunities;

(3) classroom training, which may, to the extent feasible, include opportunities to apply knowledge and skills related to academic subjects pertaining to the work world;

(4) support services, including transportation, child care, medical care, training-related personal supplies, and comprehensive guidance and counseling provided to individuals if the services are reasonable and necessary to enable a participant who cannot otherwise afford to pay for the services to

participate. Comprehensive guidance and counseling may include drug and alcohol abuse counseling and referral.

(5) educational linkages with appropriate educational agencies responsible for services to participants. Linkages may include arrangements to ensure that there is a regular exchange of information relating to the progress, problems, and needs of participants, including the results of assessments of the skill levels of participants. (Terminates September 15, 2003—sec. 9, Ch. 525, L. 2001.)

Section 77. Section 39-51-2501, MCA, is amended to read:

“39-51-2501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) “Eligibility period”, relating to extended benefits, means the period consisting of the weeks in the individual’s benefit year ~~which that~~ begin in an extended benefit period and, if the individual’s benefit year ends within ~~such the~~ extended benefit period, any weeks thereafter ~~which that~~ begin in ~~such the~~ period.

(2) “Exhaustee” means an individual who, with respect to any week of unemployment in the eligibility period:

(a) has received, prior to ~~such that~~ week, all of the regular benefits that were available under this chapter or any other state law, including dependents’ allowances and benefits payable to federal civilian employees and ex-service personnel under 5 U.S.C. chapter 85, in the current benefit year that includes ~~such that week; provided that.~~ However, for the purposes of this subsection, an individual ~~shall be deemed~~ is considered to have received all of the regular benefits that were available although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination of the benefit year, the individual may subsequently be determined to be entitled to added regular benefits.

(b) if the benefit year ~~having has~~ expired prior to ~~such that~~ week, has no wages or insufficient wages on the basis of which the individual could establish a new benefit year that would include ~~such that~~ week;

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act and ~~such~~ other federal laws ~~as that~~ are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking ~~such those~~ benefits and the appropriate agency finally determines that the individual is not entitled to benefits under ~~such~~ law, the individual is considered an exhaustee.

(3) “Extended benefit period” means a period ~~which that~~:

(a) begins with the third week after a week for which there is a state “on” indicator, provided that no extended benefit period may begin by reason of a state “on” indicator before the 14th week following the end of a prior extended benefit period ~~which that~~ was in effect with respect to this state; and

(b) ends with the third week after the first week for which there is a state “off” indicator or the 13th consecutive week of ~~such the~~ period.

(4) “Extended benefits” means benefits, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. chapter 85,

payable to an individual under the provisions of this part for weeks of unemployment in the individual's eligibility period.

(5) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the department on the basis of its reports to the U.S. secretary of labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of ~~such~~ the 13-week period.

(b) Computations required by the provisions of subsection (5)(a) ~~shall~~ must be made by the department in accordance with regulations prescribed by the U.S. secretary of labor.

(6) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code, ~~of 1954~~ 26 U.S.C. 3304, as amended."

Section 78. Section 40-5-906, MCA, is amended to read:

"40-5-906. Child support information and processing unit. (1) The department shall establish and maintain a centralized child support case registry and payment processing unit. The purpose of this unit is to facilitate mass case processing by utilizing computer technology to identify parents and their income and to initiate automated procedures to collect child support as it becomes due and payable.

(2) The case registry must include a database of information concerning child support orders, all cases receiving IV-D services, and all district court and administrative cases with support orders entered or modified after October 1, 1998.

(3) The case registry must use automated systems to obtain information from federal, state, and local databases with regard to the location of obligors and their income and assets. This information must be shared with the courts of this state and, upon request, may be shared with child support enforcement agencies of this and other states for the purpose of establishing paternity and establishing and enforcing child support obligations.

(4) To assist creditors, credit managers, and others who need timely verification of the existence of child support liens in IV-D cases, the case registry must include a directory of liens, which must include liens against an obligor's real and personal property filed by the department with other agencies and lien registries. Information in the lien registry may be made available through automated systems, which may include voice response units.

(5) Each IV-D case with a child support order must be electronically monitored so that when a timely payment of support is not made, enforcement action may be taken. To accomplish this purpose, payments due under a child support order must be paid to the department for processing and disbursement.

(6) In either a IV-D income-withholding case in this state or a state non IV-D case, if immediate income withholding is authorized after January 1, 1994, an

employer or other payor of income shall pay all support withheld from an obligor's income to one centralized location as specified by the department.

(7) To facilitate automated disbursement of support payments, automated enforcement actions, and service of notice when required, an obligor or obligee must be directed to provide, and update as necessary, information sufficient to locate the obligor and obligee and to locate the obligor's income and assets.

[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information database to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice ~~will~~ *must*, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]

(9) The department may enter into contracts or cooperative agreements with any person, business, firm, corporation, or state agency to establish, operate, or maintain the case registry and payment processing unit or any function or service afforded by the unit, provided that:

(a) the department is ultimately responsible for operation of the case registry and payment processing unit, including any function or service afforded by the unit;

(b) there is a board to act in an advisory capacity to the case registry and *payment* processing unit. The board shall advise the department in the policy, direction, control, and management of the case registry and *payment* processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members who represent the department, appointed board members shall serve for a term of 2 years. The board consists of five members as follows:

(i) a district court judge nominated by the district court judges' association;

(ii) a clerk of court nominated by the association of clerks of the district courts;

(iii) the supreme court administrator or designee;

(iv) two members, appointed by the department director, one from the child support enforcement division and one from the operations and technology division; and

(v) a representative of a county data processing unit, nominated by the association of clerks of the district courts; and

(c) the costs charged to the department under the contract or cooperative agreement may not exceed the actual costs that the department would have incurred without the contract or cooperative agreement.

(10) The department may adopt rules to implement 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. Rules must be drafted, adopted, and applied in a manner that:

(a) minimizes the personal intrusiveness on the employer or employee of any requested information;

(b) minimizes the costs to the department and any employer or employee with respect to obtaining and submitting any requested information; and

(c) maximizes the confidentiality and security of any employer or employee information that the department gathers under 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 79. Section 40-5-909, MCA, is amended to read:

“40-5-909. Centralized payment center — mandatory payments to center. (1) Payments due under a support order must be paid through the department for processing and distribution to the person or agency entitled to receive the payment whenever:

(a) the case is receiving IV-D services; or

(b) the support obligation is payable through non IV-D income withholding.

(2) A support order entered or modified in this state after October 1, 1998, that excludes the obligor from paying support through income withholding must provide that:

(a) if the case is or later becomes a IV-D case or if support becomes payable through IV-D or non IV-D income withholding, support payments must be paid through the department; and

(b) a payment that is not made to the department does not constitute payment of support or credit toward satisfaction of the support obligation unless the payment is verified by the department to its satisfaction.

(3) (a) If a support order does not include the provisions required by subsection (2) or directs payment of support to a payee other than the department, the department may give written notice to the obligor and obligee directing or redirecting payments to the department. After receipt of the notice, payment other than as directed does not constitute payment of support or credit toward satisfaction of the support obligation.

(b) An obligor who redirects payments to the department is not liable to the obligee or answerable to the court for not making payments as directed by the court.

(c) While support is required to be paid through the department, the notice directing or redirecting payments to the department may not be superseded by any subsequent order of a court or agency directing the obligor to make payments other than to the department.

(4) After the obligor has been ordered or directed to make payments to the department under this section, the obligor shall make the payments to the department and is not entitled to credit against a support obligation for payment made to a person or agency other than the department.

(5) (a) When the obligor is paying support through IV-D or non IV-D income withholding, the income-withholding order must direct the payor to make the payments through the department.

(b) If a payor is directed by the income-withholding order to make payments to a payee other than the department, the department may redirect the payments to the department by written order to the employer or payor. The order supersedes any prior, inconsistent court or agency order.

(c) For as long as income withholding is appropriate to the case, the directive to the payor to make payments to the department may not be superseded by any subsequent order of a court or agency directing payments to any other payee.

(6) (a) An employer who receives an income-withholding order issued in another state, as defined in 40-5-103, may contact the department to determine whether the withholding order was issued by the appropriate authority.

(b) The employer may elect to forward the funds to the department for distribution.

(c) If the employer elects under this section to forward the funds to the department for distribution, the employer shall immediately provide a copy of the income-withholding order to the department.

(7) Income-withholding orders may be issued in this state pursuant only to 40-5-308 through 40-5-315 and 40-5-401 through 40-5-432.

(8) Payments of support that are received by the department in interstate cases or as the result of a writ of execution, warrant for distraint, state and federal tax offset, or similar enforcement remedy must be processed through the case ~~management~~ registry and payment processing unit.

(9) (a) If, through a private collection action, an obligee obtains a payment of support that must be processed and distributed through the case ~~management~~ registry and payment processing unit, the obligee shall forward the payment to the department within 5 working days of the receipt of the payment.

(b) If the department takes an enforcement action against the obligor because the obligee failed to timely forward a payment of support under subsection (9)(a), the obligee is liable in a civil action to the obligor for the amount that should have been forwarded to the department.

(10) (a) Payments made to the department under this section must be by cash, personal or business check, money order, automatic bank account withdrawal, certified funds, electronic funds transfer services, or any other means acceptable to the department.

(b) Payments may not be credited to the obligor's child support obligation until actually received by the department.

(c) The withholding of income by a payor or employer under an order to withhold issued under Title 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation. Payments withheld from an obligor's income that are not actually received by the department may not be credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil action initiated by the obligor for the amount withheld but not paid to the department.

(d) A check presented to the department as payment, whether by the obligor, the obligor's employer, or another payor on the obligor's behalf, that is dishonored by the issuing bank may not be credited to the obligor's child support obligation.

(e) A payment made out to or delivered to any other person or agency other than to the department may not be credited to the obligor's support obligation.

(11) An uncredited payment under this section is considered as still owed by the obligor and may be collected using any remedy available under law."

Section 80. Section 41-3-439, MCA, is amended to read:

“41-3-439. Department to give placement priority to extended family member of an abandoned child. (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-438 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child’s extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member; and

(c) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-438~~(3)~~(4).

(3) This part does not affect the department’s ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent.”

Section 81. Section 41-5-103, MCA, is amended to read:

“41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) “Adult” means an individual who is 18 years of age or older.

(2) “Agency” means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) “Assessment officer” means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) “Commit” means to transfer legal custody of a youth to the department or to the youth court.

(5) “Correctional facility” means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.

(6) “Cost containment funds” means funds retained by the department under 41-5-132 for distribution by the cost containment review panel.

(7) “Cost containment review panel” means the panel established in 41-5-131.

(8) “Court”, when used without further qualification, means the youth court of the district court.

(9) “Criminally convicted youth” means a youth who has been convicted in a district court pursuant to 41-5-206.

(10) “Custodian” means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

(12) "Department" means the department of corrections provided for in 2-15-2301.

(13) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1512(1)(c) or 41-5-1513(1)(b) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(20) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(21) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(22) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(23) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(24) "Judge", when used without further qualification, means the judge of the youth court.

(25) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(26) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(27) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

- (i) have physical custody of the youth;
- (ii) determine with whom the youth shall live and for what period;
- (iii) protect, train, and discipline the youth; and
- (iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(28) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(29) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention. The term does not include shelter care or emergency placement of less than 45 days.

(30) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(31) "Probable cause hearing" means the hearing provided for in 41-5-332.

(32) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(33) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(34) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(35) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(36) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(37) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(38) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(39) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(40) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(41) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(42) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (42)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(43) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(44) "Youth assessment" means a multidisciplinary assessment of a youth as provided in ~~41-5-1201~~ 41-5-1203.

(45) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(46) "Youth care facility" has the meaning provided in 52-2-602.

(47) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, probation officers, and assessment officers.

(48) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

(49) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(50) "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding alcoholic beverages;

(b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 82. Section 41-5-215, MCA, is amended to read:

"41-5-215. Youth court and department records — notification of school. (1) Reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

- (e) the county attorney;
 - (f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;
 - (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);
 - (h) members of a local interagency staffing group provided for in 52-2-203;
 - (i) persons allowed access to the ~~records~~ reports referred to under 45-5-624(7); and
 - (j) persons allowed access under 42-3-203.
- (3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions of subsection (3)(b) *of this section*, the youth court shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's suspected drug use or criminal activity if after an investigation has been completed:
- (i) the youth has admitted the allegation or a petition has been filed with the youth court; and
 - (ii) a juvenile probation officer has reason to believe that a youth is currently involved with drug use or other criminal activity that has a bearing on the safety of children.
- (b) Notification under subsection (3)(a) may not be given for status offenses.
- (c) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.
- (4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.
- (5) The identity of a youth who for the second or subsequent time admits violating or is adjudicated as having violated a statute must be disclosed by youth court officials to the administrative officials of the school in which the youth is a student. The administrative officials may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.
- (6) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.
- (7) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings."

Section 83. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records. (1) Youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and

(6) and that pertain to a youth covered by this chapter must be physically sealed 3 years after supervision for an offense ends. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, or records referred to in 42-3-203, or reports referred to in 45-5-624(7).

(5) After youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services shall disassociate the offense and disposition information from the name of the youth in the management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13."

Section 84. Section 42-10-101, MCA, is amended to read:

"42-10-101. Short title. This part Sections 42-10-101 through 42-10-109 may be cited as "The Subsidized Adoption Act of 1977"."

Section 85. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term

of not less than 2 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed \$50,000, or both.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

Section 86. Section 45-5-603, MCA, is amended to read:

"45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if the person purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not the person is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support the person is responsible.

(2) (a) Except as provided in subsection (2)(b), a person convicted of aggravated promotion of prostitution shall be punished by:

(i) life imprisonment; or

(ii) ~~by~~ imprisonment in a state prison for a term not to exceed 20 years; or ~~by~~ a fine in an amount not to exceed \$50,000, or both.

(b) Except as provided in 46-18-219 and 46-18-222, a person convicted of aggravated promotion of prostitution of a child, who at the time of the offense is under 18 years of age, shall be punished by:

(i) life imprisonment; or

(ii) ~~by~~ imprisonment in a state prison for a term of not less than 4 years or more than 100 years; or ~~by~~ a fine in an amount not to exceed \$100,000, or both.”

Section 87. Section 45-9-101, MCA, is amended to read:

“45-9-101. Criminal distribution of dangerous drugs. (1) A person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than \$50,000, or both.

(5) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a distribution, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the person shall be imprisoned in the state

prison for not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(6) Practitioners, *as defined in 50-32-101*, and agents under their supervision acting in the course of a professional practice, ~~as defined by 50-32-101~~, are exempt from this section.”

Section 88. Section 45-9-102, MCA, is amended to read:

“45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or ~~by both such fine and imprisonment.~~

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(5) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2), (3), or (4) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both.

(6) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(7) Ultimate users and practitioners, *as defined in 50-32-101*, and agents under their supervision acting in the course of a professional practice, ~~as defined by 50-32-101~~, are exempt from this section.”

Section 89. Section 45-9-103, MCA, is amended to read:

“45-9-103. Criminal possession with intent to distribute. (1) A person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to distribute shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to distribute not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed \$50,000, or both.

(4) Practitioners, *as defined in 50-32-101*, and agents under their supervision acting in the course of a professional practice ~~as defined by 50-32-101~~ are exempt from this section.”

Section 90. Section 45-9-110, MCA, is amended to read:

“45-9-110. Criminal production or manufacture of dangerous drugs.

(1) A person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 5 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than \$50,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000. “Weight” means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.

(5) Practitioners, *as defined in 50-32-101*, and agents under their supervision acting in the course of a professional practice, ~~as defined in 50-32-101~~, are exempt from this section.”

Section 91. Section 45-10-107, MCA, is amended to read:

“45-10-107. Exemptions. Practitioners, *as defined in 50-32-101*, and agents under their supervision acting in the course of a professional practice ~~as defined by 50-32-101~~ are exempt from this part.”

Section 92. Section 46-18-242, MCA, is amended to read:

“46-18-242. Investigation and report of victim’s loss. (1) Whenever the court believes that a victim of the offense may have sustained a pecuniary loss as a result of the offense or whenever the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) documentation of the offender’s financial resources and future ability to pay restitution; and

(b) documentation of the victim’s pecuniary loss, submitted by the victim or by the ~~board of crime control~~ *department of justice* if compensation for the victim’s loss has been reimbursed by the state.

(2) When a presentence report is not authorized or requested, the court may receive evidence of the offender’s ability to pay and the victim’s loss at the time of sentencing.”

Section 93. Section 46-23-1004, MCA, is amended to read:

“46-23-1004. Duties of department. The department is responsible for any investigation and supervision requested by the board or the courts for felony offenders. The department shall:

(1) divide the state into districts and assign probation and parole officers to serve in these districts and courts;

(2) obtain any necessary office quarters for the staff in each district;

(3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) direct the work of the probation and parole officers and other employees;

(5) formulate methods of investigation, supervision, recordkeeping, and reports;

(6) conduct training courses for the staff;

(7) cooperate with all agencies, public and private, that are concerned with the treatment or welfare of persons on probation or parole;

(8) administer the ~~interstate compact for the supervision of parolees and probationers~~ *Interstate Compact for Adult Offender Supervision*; and

(9) notify the employer of a probationer or parolee if the probationer or parolee has been convicted of an offense involving theft from an employer.”

Section 94. Section 46-24-211, MCA, is amended to read:

“46-24-211. Information concerning appeal or postconviction remedies. If the defendant appeals, or pursues a postconviction remedy, or the district court grants a hearing under *Title 41, chapter 5, part 25*, the attorney general, or the county attorney if the case has not been referred to the attorney general, shall promptly inform the victim of the notice of appeal, hearing under *Title 41, chapter 5, part 25*, or postconviction petition, of the date, time, and place of any hearing, and of the decision.”

Section 95. Section 50-2-111, MCA, is amended to read:

“50-2-111. City-county board appropriations. If a city-county board is created, it is financed by one of the following methods:

(1) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses.

(b) The county's part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 40.

(c) Each participating city's part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 40.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

(2) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of the expenses.

(b) Subject to 15-10-420, the county's part of the total expenses is financed by a levy on the taxable value of all taxable property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 40. If the levy is not sufficient to fund the county's share, the county commissioners may supplement it with an appropriation from the county general fund.

(c) Subject to 15-10-420, each participating city's part of the total expenses is financed by a levy on the taxable ~~value~~ value of all taxable property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 40.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

(e) The levies authorized by this subsection (2) are in addition to all other levies authorized by law."

Section 96. Section 50-4-502, MCA, is amended to read:

"50-4-502. Health care database — information submitted. (1) The department, ~~with advice from the health care advisory council,~~ shall design and develop a health care database that includes data on health care resources and the cost and quality of health care services. The purpose of the database is to assist in developing and monitoring the progress of incremental health care reform measures that increase access to health care services, promote cost containment, and maintain quality of care.

(2) The department shall work in conjunction with health care providers, health insurers, health care facilities, private entities, and entities of state and local governments to determine the information necessary to fulfill the purposes of the database provided in subsection (1).

(3) The department shall adopt by rule a confidentiality code to ensure that information in the database is maintained and used according to state law governing confidential health care information.

(4) The department shall make recommendations to the legislature by October 1, 1996, on the actions needed to establish the database, including an estimate of the fiscal impact on state and local government, health care providers, health insurers, health care facilities, and private entities."

Section 97. Section 50-4-504, MCA, is amended to read:

"50-4-504. Definitions. As used in this part, the following definitions apply:

(1) "Database" means the health care database created pursuant to 50-4-502.

(2) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) "Health care" includes both physical health care and mental health care.

~~(4) "Health care advisory council" means the council provided for in 50-4-103, 50-4-104, 50-4-203 through 50-4-206, and 50-4-403.~~

~~(5)~~(4) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

~~(6)~~(5) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

~~(7)~~(6) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities."

Section 98. Section 50-4-505, MCA, is amended to read:

"50-4-505. Uniform claim forms and procedures. The commissioner of insurance, ~~after consultation with the health care advisory council,~~ may adopt by rule uniform health insurance claim forms and uniform standards and procedures for the use of the forms and processing of claims, including the submission of claims by means of an electronic claims processing system."

Section 99. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(8) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(9) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(10) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(14) "Department" means the department of public health and human services provided for in 2-15-2201.

(15) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(16) "Federal acts" means federal statutes for the construction of health care facilities.

(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(18) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including ~~chemical dependency~~ *licensed addiction* counselors. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(19) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(20) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(21) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(22) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(23) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(24) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients, but does not include critical access hospitals.

(25) "Infirmiry" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

- (a) an "infirmiry—A" provides outpatient and inpatient care;
- (b) an "infirmiry—B" provides outpatient care only.

(26) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

(27) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(28) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(29) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(30) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(31) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(32) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(33) "Offer" means the representation by a health care facility that it can provide specific health services.

(34) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(35) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(36) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(37) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(38) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(39) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(40) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(41) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(42) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(43) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

(44) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(45) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(46) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(47) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(48) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(49) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 100. Section 50-5-301, MCA, is amended to read:

"50-5-301. When certificate of need is required — definitions. (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds \$1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds \$1.5 million.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during the 2 years prior to the date on which the letter of intent for the proposal is received;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health care facilities plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of \$150,000 or more;

(d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(e) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

(f) the expansion of the geographical service area of a home health agency;

(g) the use of hospital beds in excess of five to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101;

(h) the provision by a hospital of services for home health care, long-term care, or inpatient chemical dependency treatment; or

(i) the construction, development, or other establishment of a facility for ambulatory surgical care through an outpatient center for surgical services in a county with a population of 20,000 or less according to the most recent federal census or estimate.

(2) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal home health agency, a long-term care facility, or an inpatient chemical dependency facility. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(h);

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including ~~chemical dependency~~ *licensed addiction* counselors; or

(iii) a rehabilitation facility or an outpatient center for surgical services.

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility."

Section 101. Section 50-60-313, MCA, is amended to read:

"50-60-313. Petition for designation of county jurisdictional area and adoption of building code. (1) A county jurisdictional area and a building code applicable to that area may be adopted by petition as provided in this section.

(2) A petition may be circulated by the record owner of real property to which the county jurisdictional area will be applied or extended for the purpose of gathering signatures on the petition. Only a record owner of real estate within the proposed county jurisdictional area is qualified to sign a petition.

(3) A petition to designate a county jurisdictional area may also be circulated by the board of county commissioners. A petition circulated by the board of county commissioners is not subject to the requirements of 50-60-310.

(4) Before a petition may be circulated for signatures, the language of the proposed building code must be approved by the department of labor and industry and the form of the petition must be approved by the election administrator of the county in which the real property is located. A building code proposed pursuant to this section must be approved by the department of ~~commerce~~ *labor and industry* if it meets the criteria provided in 50-60-302 for the approval of a code within a code enforcement program. The election administrator shall approve the form of the petition if the petition meets, ~~and the election administrator shall comply with,~~ the requirements of 7-5-134, 7-5-135, and this section, ~~and the election administrator shall comply with those requirements,~~ except that:

(a) the number of valid signatures required for the creation or extension of the county jurisdictional area is a majority of the record owners of real property located within the proposed jurisdictional area; and

(b) a petition containing the number of valid signatures required by this section is not submitted to a vote by electors.

(5) An individual circulating a petition for signatures ~~must~~ *shall* make available to individuals who may sign the petition a copy of the building code approved by the department of labor and industry and a map showing the county jurisdictional area within which the code will apply. The petition must clearly indicate that the individual signing the petition read and understood the provisions of the code and understood the geographic area in which the code would be applied.

(6) The county jurisdictional area and the building code applicable to that area become effective 60 days after the determination by the county election administrator that the petition has been signed by the number of record owners of real property required by this section.

(7) (a) Except as provided in this subsection, once adopted by petition as provided in this section, a county building code may not be amended except by petition in accordance with this section or by submitting the modification to the electors as provided in 50-60-312.

(b) A county building code adopted by petition may be modified without petition or election if:

(i) the modification consists of a provision taken from a uniform or model building code; and

(ii) the provision does not regulate a wholly new component of a structure, such as wiring, plumbing, or concrete foundation, that was previously unregulated."

Section 102. Section 52-1-103, MCA, is amended to read:

"52-1-103. Powers and duties of department. The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

(3) establish a system of councils at the state and local levels to make recommendations and to advise the department on issues, including children's issues;

(4) provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(5) register or license youth care facilities, child-placing agencies, day-care facilities, community homes for persons with developmental disabilities, community homes for severely disabled persons, and adult foster care facilities;

(6) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

(7) administer the ~~interstate compact for children~~ *Interstate Compact for the Placement of Children*;

(8) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 52, chapter 7, part 1; and

(b) administer elder abuse prevention services;

(9) develop a statewide youth services and resources plan that takes into consideration local needs;

(10) administer services to the aged;

(11) provide consultant services to:

(a) facilities providing care for adults who are needy, indigent, or dependent or who have disabilities; and

(b) youth care facilities;

(12) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(13) contract, as necessary, for administration of child and adult protection services for each county; and

(14) adopt rules necessary to carry out the purposes of 52-2-612 and this chapter."

Section 103. Section 53-2-103, MCA, is amended to read:

"53-2-103. Records and reports. (1) Each ~~county department~~ *local office of public assistance* shall keep ~~such~~ records and make ~~such~~ reports ~~and in such the detail as that the department may from time to time require~~ *requires* and shall transmit to the department upon its request copies of applications and any ~~or all~~ other records pertaining to any case.

(2) The department ~~is hereby authorized and directed to~~ *shall keep such the* records in ~~such the form and containing such the information as that the federal social security board may from time to time require~~ *requires* and ~~shall~~ comply with ~~such the provisions as that the federal board may from time to time find~~

~~necessary to assure~~ *finds necessary to ensure* the correctness and verification of ~~such~~ *the* reports.”

Section 104. Section 53-3-115, MCA, is amended to read:

“53-3-115. Legislative findings. (1) The legislature finds that in order to use the limited resources of the state for the purposes of providing public assistance to persons whom it has determined are in need, certain programs must be eliminated and the provision of public assistance programs must be reorganized for more efficient delivery of services.

(2) The legislature finds that county governments are in the best position to efficiently and effectively deliver services for those in need who are not otherwise eligible for similar services provided by the department of public health and human services.

(3) (a) The legislature finds that the needs of persons who are aged, infirm, or misfortunate are adequately and appropriately provided for through the following programs:

- (i) medicaid;
- (ii) ~~aid for dependent children~~ *financial assistance, as defined in 53-2-902*;
- (iii) food stamps;
- (iv) commodities; and
- (v) low-income energy assistance.

(b) The legislature further finds that the counties may in their discretion provide other programs of public assistance that they determine are appropriate and that may be funded with money derived from a county mill levy.

(4) The legislature finds that the effects of eliminating the state program of general relief are not known and that the administration and financing of public assistance programs by each county may not provide uniform assistance throughout the state.”

Section 105. Section 53-4-221, MCA, is amended to read:

“53-4-221. County department charged with local administration. ~~The county department of public welfare~~ *local office of public assistance* is ~~charged with~~ *responsible for* the local administration and supervision of programs funded under the temporary assistance for needy families block grant, subject to the powers, duties, and functions prescribed for the ~~county department office~~ *county department office* in chapter 2 of this title.”

Section 106. Section 53-4-222, MCA, is amended to read:

“53-4-222. County administration subject to rules prescribed by department. ~~The county department of public welfare~~ *local office of public assistance* shall administer the provisions of this part in the respective counties subject to the rules prescribed by the department of public health and human services pursuant to the provisions of this part.”

Section 107. Section 53-4-232, MCA, is amended to read:

“53-4-232. Application for assistance. Application for assistance under this part ~~shall~~ *must* be made to the ~~county department of~~ *local office of public assistance* in the county in which the dependent child is residing. ~~Such~~ *The* application ~~shall~~ *must* be made by the relative with whom the child is living or will live. One application may be made for several children of the same family if

they reside with the same person. All individuals wishing to make application for this assistance ~~shall have~~ *must be given* the opportunity to do so.”

Section 108. Section 53-4-601, MCA, is amended to read:

“53-4-601. Demonstration project — purpose. (1) The department is authorized to administer a demonstration project pursuant to section 1115 of the Social Security Act, 42 U.S.C. 1315, to provide assistance under Title IV of that act, 42 U.S.C. 601, et seq., to families who are currently receiving, eligible for, or at risk of becoming eligible for ~~FAIM~~ financial assistance. This demonstration project may be cited as the families achieving independence in Montana (FAIM) project.

(2) The purpose of the demonstration project is to promote self-sufficiency and responsibility of participants by providing supports and incentives, such as child-care assistance, training, education, medical assistance, and resource referrals, and to make procedures and requirements less complex and more uniform in the ~~FAIM~~ financial assistance, food stamp, and medicaid programs.”

Section 109. Section 53-4-609, MCA, is amended to read:

“53-4-609. Categorical eligibility for other assistance. Recipients of ~~FAIM~~ financial assistance under a ~~component~~ of the FAIM project are not categorically eligible for food stamp benefits and the low-income energy assistance program but are eligible only if they satisfy all the eligibility requirements for those programs.”

Section 110. Section 53-18-101, MCA, is amended to read:

“53-18-101. Definitions. As used in this part, the following definitions apply:

(1) “Department” means the department of public health and human services provided for in 2-15-2201.

(2) “Self-sufficiency trust” means a trust created by a nonprofit corporation that is a 501(c)(3) organization under the ~~United States~~ Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 501(c)(3)*, as amended, and that was organized under the Montana Nonprofit Corporation Act, Title 35, chapter 2, for the purpose of providing for the care and treatment of one or more persons who are residents of this state and are persons with developmental disabilities, mental illness, or physical disabilities or are otherwise eligible for department services, as defined by the department.”

Section 111. Section 53-21-186, MCA, is amended to read:

“53-21-186. Support of patient conditionally released. When a mental health facility conditionally releases a patient committed to its care, it is not liable for ~~his~~ *the patient’s* support while conditionally released. Liability ~~devolves upon~~ *transfers to* the legal guardian, parent, or person under whose care the patient is placed when conditionally released or ~~upon~~ *to* any other person legally liable for ~~his~~ *the patient’s* support. The ~~public welfare officials of the county~~ *local office of public assistance in the county* where the patient resides or is found ~~are~~ *is* responsible for providing relief and care for a conditionally released patient who is unable to ~~maintain himself~~ *be self-supporting* or who is unable to secure support from the person under whose care ~~he~~ *the patient* was placed on convalescent leave, like any other person in need of relief and care, under the public assistance laws.”

Section 112. Section 53-30-403, MCA, is amended to read:

“53-30-403. Boot camp incarceration program — eligibility — rulemaking. (1) The department shall establish a boot camp incarceration program for offenders incarcerated in a correctional institution.

(2) In order to be eligible for participation in the boot camp incarceration program, an inmate:

(a) must be serving a sentence of at least 1 year in a Montana correctional institution for a felony offense other than a felony punishable by death, except as provided in 46-18-201~~(4)(e)~~(4)(m);

(b) shall obtain the concurrence of the sentencing court; and

(c) shall pass a physical examination to ensure sufficient health for participation.

(3) The boot camp incarceration program must include:

(a) as a major component, a strong emphasis on work, physical activity, physical conditioning, and good health practices;

(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;

(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be provided to, read by, and signed by all prospective enrollees; and

(d) a maximum enrollment period of 120 days.

(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission of an inmate to the program is discretionary with the department. Enrollment may be revoked only:

(i) at the participant's request; or

(ii) upon written departmental documentation of a participant's failure or refusal to comply with program requirements.

(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the boot camp incarceration program more than twice.

(5) The department may adopt rules for the establishment and administration of the boot camp incarceration program.”

Section 113. Section 61-3-103, MCA, is amended to read:

“61-3-103. (Temporary) Filing of security interests — perfection — rights — procedure — fees. (1) Except as provided in 61-3-109, the department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, and the amount of the lien and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the

address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer in the county in which the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in 61-3-109 and subsection (6) of this section, a voluntary security interest or lien is perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Except as provided in 61-3-109, voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date that the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of \$1 for each day that the person fails to file the satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of the owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and

the action and the names of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time that this law takes effect.

(11) A fee of \$8 must be paid to the department to file any security interest or other lien against a motor vehicle. The \$8 fee includes the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and of deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of \$4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer. Of the \$8 fee, \$4 must be deposited in the state general fund in accordance with 15-1-504. The remaining \$4 must be forwarded to the ~~state treasurer~~ *department of revenue* for deposit in the motor vehicle information technology system account provided for in 61-3-550. (Terminates June 30, 2008—sec. 2, Ch. 260, L. 1999.)

61-3-103. (Effective July 1, 2008) Filing of security interests — perfection — rights — procedure — fees. (1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of \$1 for each day that the person fails to file ~~such~~ the satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(11) A fee of \$8 must be paid to the department to file any security interest or other lien against a motor vehicle. The \$8 fee must include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of \$4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer. Of the \$8 fee, \$4 must be deposited in the state general fund in accordance with 15-1-504. The remaining \$4 must be forwarded to the ~~state treasurer~~ department of revenue for deposit in the motor vehicle information technology system account provided for in 61-3-550. (Terminates June 30, 2011—sec. 9, Ch. 394, L. 2001.)

61-3-103. (Effective July 1, 2011) Filing of security interests — perfection — rights — procedure — fees. (1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in

the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales

contract within 15 days after receiving final payment is required to pay the department the sum of \$1 for each day that the person fails to file ~~such~~ the satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(11) A fee of \$4 must be paid to the department to file any security interest or other lien against a motor vehicle. The \$4 fee must include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of \$4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."

Section 114. Section 61-3-570, MCA, is amended to read:

"61-3-570. Local option flat fee. (1) A *local option* flat fee for each vehicle may be imposed within a county by the board of county commissioners by adoption of a resolution and referral to the electorate. The imposition of the *local option flat fee* must be approved by the majority of the electorate voting in the election.

(2) The *local option* flat fee is distributed as provided in 61-3-537."

Section 115. Section 61-3-736, MCA, is amended to read:

"61-3-736. Assessment of proportionally registered interstate motor vehicle fleets — payment of fees required for registration. (1) (a) The department of transportation shall determine the fee for the purpose of imposing the fee in lieu of tax as provided in 61-3-528 and 61-3-529 on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors and the light vehicle registration fee under 61-3-560 and 61-3-561 on light vehicles in interstate motor vehicle fleets that are proportionally registered under the provisions of 61-3-711 through 61-3-733. The fee must be apportioned on the ratio of total miles traveled to in-state miles traveled as prescribed by 61-3-721. The fee in lieu of tax or registration fee on interstate motor vehicle fleets is imposed upon application for proportional registration and must be paid by the persons who own or claim the fleet or in whose possession or control the fleet is at the time of the application.

(b) With respect to an original application for a fleet that has a situs in Montana for the purpose of the fee in lieu of tax or registration fee under this part or any other provision of the laws of Montana, the fee in lieu of tax or registration fee on fleet vehicles must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

(c) Vehicles subject to the light vehicle registration fee as part of a fleet under this subsection (1) are not subject to the local option *vehicle* tax or flat fee imposed under 61-3-537 or 61-3-570.

(2) With respect to a renewal application for a fleet, the fee in lieu of tax and the light vehicle registration fee are imposed for a full year. The department of transportation shall prorate the new fee in lieu of tax in 61-3-529 for motor vehicles that are proportionally registered, as provided in 61-3-721, and whose annual registration period does not coincide with the calendar year.

(3) Vehicles contained in a fleet for which current fees have been assessed and paid may not be assessed or charged fees under this section upon presentation to the department of proof of payment of fees for the current registration year. The payment of fleet vehicle fees in lieu of tax, light vehicle registration fees, and license fees is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

(4) All fees collected on motor vehicle fleets under this chapter must be deposited and distributed as provided in 61-3-738."

Section 116. Section 61-8-906, MCA, is amended to read:

"61-8-906. Liability insurance — storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:

(a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, as defined in 61-9-416, or occurring on the business premises of a commercial tow truck operator in an amount not less than:

- (i) \$300,000 for class A tow trucks;
- (ii) \$500,000 for class B tow trucks; and
- (iii) \$750,000 for class C tow trucks;

(b) insurance to cover the damage to cargo or other property entrusted to the care of the commercial tow truck operator; and

(c) garage ~~keepers legal~~ liability insurance.

(2) A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:

- (a) adequate for the secure storage and safekeeping of stored vehicles;
- (b) located in a place that is reasonably convenient for public access;
- (c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays; and
- (d) large enough to store all the vehicles towed for law enforcement agencies."

Section 117. Section 69-8-104, MCA, is amended to read:

"69-8-104. Pilot programs. (1) Except as provided in 69-8-201 ~~(3)~~(4) and 69-8-311, utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in 69-8-501 on or before July 1, 2005.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

- (a) the level of demand for electricity supply choice and the availability of market prices for small customers;
- (b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of small customers;
- (c) the electricity suppliers' interest in serving small customers and the opportunities in providing service to small customers; and
- (d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to small customers."

Section 118. Section 69-8-501, MCA, is amended to read:

"69-8-501. Transition advisory committee. (1) A transition advisory committee on electric utility industry restructuring is created. The transition advisory committee is composed of twelve voting members who are appointed as follows:

- (a) The speaker of the house shall appoint six members from the house of representatives, not more than three of whom may be from one political party.
 - (b) The president of the senate shall appoint six members from the senate, not more than three of whom may be from one political party.
- (2) The following entities shall appoint nonvoting advisory representatives to the transition advisory committee:
- (a) The director of the department of environmental quality shall appoint one department representative.
 - (b) The legislative consumer committee shall appoint one representative.
 - (c) One representative of the cooperative utility industry is appointed as designated by the Montana ~~electrical-cooperative~~ *electric cooperatives'* association.
 - (d) The public utilities in the state of Montana shall appoint one member.
 - (e) The commission shall appoint one member.
 - (f) The governor shall appoint the following nonvoting committee members:
 - (i) one representative from the industrial community with an interest in the restructuring of the electric utility industry;
 - (ii) one representative from the nonindustrial retail electric consumer sector;
 - (iii) one representative from organized labor;
 - (iv) one representative from the community comprising environmental and conservation interests;
 - (v) one representative from a low-income program provider;
 - (vi) one representative of Montana's Indian tribes; and
 - (vii) one representative of the electric power market industry.
- (3) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(4) Legislative members are entitled to salary and expenses as provided in 5-2-302.

(5) The public service commission, legislative services division, and appropriate state agencies shall provide staff assistance as requested by the committee.

(6) Transition advisory committee members must be appointed to terms for up to 2 years, expiring on January 1 of odd-numbered years.

(7) The voting members shall select a transition advisory committee presiding officer.

(8) The transition advisory committee on electric utility industry restructuring must dissolve on December 31, 2007.

(9) The transition advisory committee shall provide an annual report on the status of electric utility restructuring on or before November 1 to the governor, the speaker of the house, the president of the senate, and the commission.

(10) The transition advisory committee shall meet at least quarterly or as often as is necessary to conduct its business.

(11) The transition advisory committee shall analyze and report on the transition to effective competition in the competitive electricity supply market.

(12) The criteria that the transition advisory committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:

(a) the level of demand for power supply choice and the availability of market prices for smaller customers;

(b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;

(c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and

(d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.

(13) The transition advisory committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.

(14) The transition advisory committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th legislature to adjust the funding level provided for in 69-8-402 to coincide with the related activities of the region at that time.

(15) On or before July 1, 2002, the transition advisory committee, in coordination with the commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs have developed. These recommendations may also address how future reevaluations will be provided for, if necessary.

(16) On or before November 1 of each odd-numbered year, the transition advisory committee shall collect information to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers outside of the state of Montana comparable to the opportunity provided pursuant to this chapter to utilities or their affiliates located outside the state of Montana. That information must be included in a report to each legislature."

Section 119. Section 70-24-436, MCA, is amended to read:

"70-24-436. Mobile home parks — grounds for termination of rental agreement. (1) With respect to a tenant who rents space in a mobile home park but does not rent the mobile home, if there is a noncompliance by the tenant with the rental agreement or with a provision of 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts or omissions constituting the noncompliance and stating that the rental agreement will terminate upon a date specified in the notice that may not be less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice for one or more of the following reasons and subject to the following conditions:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement, for which the notice period is ~~7 calendar~~ days;

(b) a violation of a mobile home park rule other than provided for in subsection (1)(a) that does not create an immediate threat to the health and safety of any resident of the mobile home park or its manager or owner, for which the notice period is 14 days;

(c) a violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park, its manager, or its owner, for which the notice period is 24 hours;

~~(d) subject to the right to terminate in subsections (1)(c) through (1)(f), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance;~~

~~(e)(d)~~ late payment of rent, late charges, or common area maintenance fees, as established in the rental agreement, three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by subsection (1)(a), for which the notice period ~~for termination~~ for the final late payment is 30 days;

~~(f)(e)~~ a violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park, its manager, or its owner, whether or not notice was given pursuant to subsection (1)(c) and the violation was remedied as provided in subsection ~~(1)(d)~~ (3), for which the notice period ~~for termination~~ is 14 days;

~~(g)(f)~~ two or more violations within a 12-month period of the same rule for which notice has been given for each prior violation, as provided in subsection (1)(a), (1)(b), or (1)(c), for which the notice period ~~for termination~~ for the final violation is 30 days;

~~(h)(g)~~ two or more violations of 70-24-321(1) within a 12-month period, for which the notice period ~~for termination~~ for the final violation is 14 days;

~~(h)~~ any violation of 70-24-321(2), for which the notice period is as provided in 70-24-422(3);

~~(i)~~ disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, for which the notice period is 30 days;

~~(j)~~ any other noncompliance or violation not covered by subsection (1)(a) through ~~(4)(j)~~ (1)(i) that endangers other residents or mobile home park personnel or causes substantial damage to the mobile home park premises, for which the notice period is 14 days;

~~(k)~~ conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other residents or the landlord of the mobile home park, or the landlord's documentation of a violation of the provisions of Title 45, chapter 9, for which the notice period is 14 days;

~~(l)~~ changes in the use of the land if the requirements of subsection (2) are met, for which the notice period is 180 days;

~~(m)~~ any legitimate business reason not covered elsewhere in this subsection (1), provided that the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the land ~~composing~~ *comprising* the mobile home park from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the mobile home park.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice, the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner, and any tenant of the mobile home owner whose identity and address have been provided to the landlord, written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) *Subject to the right to terminate in subsections (1)(d) through (1)(k), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance.*

~~(3)~~(4) For purposes of calculating the total number of notices given within a 12-month period under subsection ~~(1)(e)~~ (1)(d), only one notice for each violation per month may be included in the calculation.”

Section 120. Section 72-16-607, MCA, is amended to read:

“72-16-607. Allowance for exemptions, deductions, and credits. (1) In making an apportionment, allowances ~~shall~~ *must* be made for any exemptions granted, *for* any classification made of persons interested in the estate, and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing ~~such~~ *the* relationship or receiving the gift, but if an interest is subject to a prior present interest ~~which~~ *that* is not allowable as a deduction, the tax apportionable against the present interest ~~shall~~ *must* be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or ~~his~~ *the decedent's* estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes ~~in the of~~ *that* nature ~~thereof~~ applicable to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment ~~thereof~~ to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or devise is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in 72-16-603 and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 2053(d)*, as amended, ~~of the United States~~, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.”

Section 121. Section 75-11-302, MCA, is amended to read:

“75-11-302. Definitions. Except as provided in subsections (2), (15), and (25), the following definitions apply to this part:

(1) “Accidental release” means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) “Aviation gasoline” means aviation ~~gasoline~~ *fuel* as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) “Board” means the petroleum tank release compensation board established in 2-15-2108.

(4) “Bodily injury” means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(10) "Eligible costs" means expenses reimbursable under 75-11-307.

(11) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) (a) "Owner" means:

(i) a person that holds title to, controls, or possesses an interest in a petroleum storage tank; or

(ii) a person that owns the property on which a petroleum storage tank from which a release occurred was located.

(b) The term does not include a person that holds an interest in a *storage* tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

(d) aboveground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 122. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of department — findings necessary for certification. (1) Within 30 days after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

- (a) the basis of the need for the facility;
- (b) the nature of the probable environmental impact;
- (c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- (d) in the case of an electric, gas, or liquid transmission line or aqueduct:
 - (i) what part, if any, of the line or aqueduct will be located underground;
 - (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and
 - (iii) that the facility will serve the interests of utility system economy and reliability;
- (e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;
- (f) that the facility will serve the public interest, convenience, and necessity;
- (g) that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and
- (h) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands.

(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:

- (a) the items listed in subsections (1)(a) and (1)(b);
- (b) the benefits to the applicant and the state resulting from the proposed facility;
- (c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; or

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, do not pose any threat of serious injury or damage to:

(i) the environment; or

(ii) the social and economic conditions of inhabitants of the affected area; or

(iii) the health, safety, or welfare of area inhabitants.

(4) For facilities defined in ~~77-20-104(8)~~ 75-20-104, if the department cannot make the findings required in ~~75-20-301~~ this section, it shall deny the certificate."

Section 123. Section 76-6-109, MCA, is amended to read:

"76-6-109. Powers of public bodies. (1) A public body has the power to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and use grants and any other assistance from the federal government and any other public or private sources, to give security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government conditions imposed pursuant to federal laws as the public body may consider reasonable and appropriate and that are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities that may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state, ~~or~~ a city, town, or other municipality, or a county may:

(a) appropriate funds;

(b) subject to 15-10-420, levy taxes and assessments according to existing codes and statutes;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state, subject to subsection (3); and

(d) exercise its powers under this chapter through a board or commission or through the office or officers that its governing body by resolution determines or as the governor determines in the case of the state.

(3) Property taxes levied to pay the principal and interest on general obligation bonds issued by a city, town, other municipality, or county pursuant to this chapter may not be levied against the following property:

(a) agricultural land eligible for valuation, assessment, and taxation as agricultural land under 15-7-202;

(b) forest land as defined in 15-44-102;

(c) all agricultural improvements on agricultural land referred to in subsection (3)(a);

(d) all noncommercial improvements on forest land referred to in subsection (3)(b); and

(e) agricultural implements and equipment described in 15-6-138(1)(a); and

~~(f) livestock described in 15-6-136(1)(a)."~~

Section 124. Section 77-6-114, MCA, is amended to read:

"77-6-114. Lessee responsible for assessments and taxes for weed control. ~~It shall be~~ *is* the duty of the board in leasing any agricultural state land to provide in ~~such the~~ lease that the lessee of *any agricultural state lands so leased* lying within the boundaries of any ~~noxious weed control management~~ district shall assume and pay all assessments and taxes levied by the board of county commissioners for ~~such any~~ district on ~~such those~~ state lands, and ~~such the~~ assessments and tax levy ~~shall must~~ be imposed on ~~such the~~ lessee as a personal property tax and ~~shall must~~ be collected by the county treasurer in the same manner as regular personal property taxes are collected. All ~~such state~~ lessees ~~shall be of these state lands~~ are required under the terms of ~~such the~~ lease to pay ~~such the~~ assessment and tax levy at the same time and *in the same* manner as other regular personal taxes are paid."

Section 125. Section 80-7-814, MCA, is amended to read:

"80-7-814. Administration and expenditure of funds. (1) (a) Except as provided in subsection (1)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches \$2.5 million, except in case of a noxious weed emergency as provided in 80-7-815. Once this amount is accumulated, interest or revenue generated by the trust fund and by other funding measures provided by this part must be deposited in

the special revenue fund and may be expended for noxious weed management projects in accordance with this section, as long as the principal of the trust fund remains at least \$2.5 million.

(b) Money deposited as principal in the trust fund from [former 80-7-822] may not be expended until the principal of the trust fund reaches \$10 million. However, interest or revenue generated by the trust fund must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section.

(2) The department may expend funds under this section through grants or contracts to communities, weed ~~control~~ *management* districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source or by an amount of not less than \$100,000 for first-class counties, as defined in 7-1-2111.

(3) The department may expend funds without the restrictions specified in subsection (2) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed ~~control~~ *management* districts;

(c) special grants to local weed ~~control~~ *management* districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(4) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(5) In making expenditures under subsections (2) and (3), the department shall give preference to weed ~~control~~ *management* districts and community groups.

(6) If the noxious weed management trust fund is terminated by law, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose."

Section 126. Section 80-8-120, MCA, is amended to read:

“80-8-120. Local pesticide regulation. (1) (a) A unit of local government may adopt an ordinance to require a commercial applicator, as defined in 80-8-102(6), to provide notification when applying a pesticide, subject to the following provisions:

(i) The applicator shall post a sign or signs at the time of the pesticide application or provide notification as provided for in subsection (1)(a)(v). The applicator, property owner, or property manager may not remove a sign until the pesticide is dry or the reentry interval on the pesticide label has expired, whichever is later.

(ii) A sign must be:

(A) at least 4 inches in height and 5 inches in width; and

(B) made of weather-resistant material if used for outdoor application.

(iii) A sign must contain:

(A) the words “pesticide application”; and

(B) the telephone number of the applicator, property owner, or property manager who can supply further information about the pesticide.

(iv) A sign must be posted:

(A) at a point clearly visible from each street or road frontage of the property so that the warning is conspicuous from the public right-of-way;

(B) for an interior application, at each public access to the treated property with the front of the sign facing the access;

(C) for a golf course, at a conspicuous place in the clubhouse or pro shop or at the first and tenth tees.

(v) Notification for an application by a mosquito control district or a weed ~~control~~ *management* district must be provided in a local newspaper or on local radio or television stating that the property will be treated and providing the telephone number of an individual who can supply further information on the pesticide applications. Notification under this subsection (1)(a)(v) must be made annually in the spring and periodically during the pesticide application season.

(vi) Posting or notification is not required for the following:

(A) a spot treatment of an area that is less than 100 square feet;

(B) an applicator subject to the environmental protection agency’s worker protection standards as published in 40 CFR, part 156, subpart K, and 40 CFR, part 170;

(C) an application on land classified as agricultural land or forest land for taxation purposes;

(D) an application on an irrigation conveyance facility or land or on an irrigation ditch easement or right-of-way;

(E) an application of a pesticide that is a minimum risk pesticide as published by the environmental protection agency in 40 CFR 152.25(g)(1) or a sanitizer, a disinfectant, or a microbial registered with the environmental protection agency;

(F) an application on a railroad facility or right-of-way;

(G) an application on a public utility facility or right-of-way.

(b) A unit of local government that adopts a notification ordinance pursuant to this section shall:

(i) notify the department that it is adopting the ordinance on pesticide notification as provided in this section and provide the department a final copy for the department's register provided for in subsection (4); and

(ii) fund the costs, including but not limited to:

- (A) educating its citizens of the ordinance's requirements;
- (B) compensating personnel to enforce the ordinance; and
- (C) prosecution of a violation of the ordinance.

(c) A unit of local government may not adopt a notification ordinance under this section that imposes additional fee requirements on a commercial applicator.

(2) The department may enter into a cooperative agreement with a unit of local government for the administration and enforcement of local rules adopted under 80-8-105(3)(a).

(3) Except as provided in subsections (1) and (2), a unit of local government may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides or enact notification provisions more stringent than those provided for in subsections (1) and (2). It is not the intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides pursuant to Title 75, chapter 10, part 4.

(4) The department shall maintain and, upon request, distribute a register of ordinances adopted by local governing bodies pursuant to subsection (1)."

Section 127. Section 81-6-105, MCA, is amended to read:

"81-6-105. Special livestock deputy — duties — compensation. The county livestock protective committee may recommend to the board of county commissioners the appointment of a special livestock deputy, satisfactory to the department and the sheriff, whose duties are to assist the department and the sheriff in the enforcement of hide and brand inspection laws, laws governing the movement and sale of livestock and the treatment and prevention of livestock diseases, laws pertaining to the apprehension of livestock rustlers and the prevention of rustling, and other laws which that are of particular concern to the livestock industry of the county, particularly as regards with regard to cattle. The special livestock deputy may receive a commission from the department and appointment as a deputy from the sheriff of the county and shall give the same bond for the faithful performance of his the duties as the bond required from officers performing similar duties. The special livestock deputy shall must receive compensation for his services and for mileage traveled in the performance of his the special livestock deputy's duties in an amount set by the board of county commissioners on the recommendation of the committee, to be paid from the stockmen's livestock special deputy fund and from the county general fund in the proportions set by the board of county commissioners."

Section 128. Section 85-20-1004, MCA, is amended to read:

"85-20-1004. Mitigation account. (1) ~~An expendable~~ A private purpose trust account, called the mitigation account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds appropriated by the state for mitigation measures required by Article VI of the compact.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the mitigation account must be made available to the United States bureau of reclamation to cover the state's cost-share for

construction of mitigation measures chosen on completion of a feasibility study and appropriate state and federal environmental review by the bureau of reclamation and on consideration of the economic development plan authorized by 85-20-1008.”

Section 129. Section 85-20-1005, MCA, is amended to read:

“85-20-1005. Watershed improvement trusts. (1) ~~A nonexpendable trust~~ *permanent* fund account, called the state Milk River watershed improvement trust, is established, as provided for in 17-2-102, for deposit of funds appropriated pursuant to the compact for a permanent trust. Interest income may be used by the Milk River coordinating committee established pursuant to the compact for the purpose of allocating grants and loans.

(2) ~~A nonexpendable trust~~ *permanent* fund account, called the federal Milk River watershed improvement trust, is established, as provided for in 17-2-102, for receipt of federal funds appropriated for a permanent trust. Interest income may be used by the Milk River coordinating committee established pursuant to the compact for the purpose of allocating grants and loans.

(3) The state and federal Milk River watershed improvement trusts must be collectively referred to as the Milk River watershed improvement trusts.”

Section 130. Section 85-20-1007, MCA, is amended to read:

“85-20-1007. Peoples Creek minimum flow account. (1) ~~An expendable~~ *A private purpose* trust account, called the Peoples Creek minimum flow account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds appropriated by the state for efficiency improvements and bypass structures for irrigation upstream from the Fort Belknap Reservation in the Peoples Creek Basin 40I and for a reservoir on the Reservation for the purpose of improving minimum stream flow.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the Peoples Creek minimum flow account must be made available to the water users and the tribes to cover the cost of construction of improvements as agreed to in the state and federal cost-share negotiations.”

Section 131. Section 87-1-209, MCA, is amended to read:

“87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

- (a) for fish hatcheries; ~~or nursery ponds; or alternative livestock ranches;~~
- (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- (e) for state parks and outdoor recreation;
- (f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and water rights acquired by it on those terms after public notice as required by subsection (3)(b), without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department lands and water rights for full market value to other governmental entities without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(5) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(6) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

Section 132. Section 87-1-221, MCA, is amended to read:

“87-1-221. Acquisition, importation, and propagation of fish and game — waterfowl food. The department may:

- (1) acquire by gift, purchase, capture, or otherwise any fish, game, game birds, or animals for propagation, experimental, or scientific purposes;
- (2) provide for the importation of game birds and game and fur-bearing animals and for the protection, propagation, and distribution of imported or native birds and animals;
- (3) use fish and game funds necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, ~~alternative livestock ranches,~~ or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or nongame birds;
- (4) appropriate money from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game or fur-bearing animals, or game or nongame birds;
- (5) spend fish and game funds necessary to introduce and propagate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state.”

Section 133. Section 90-6-127, MCA, is amended to read:

“90-6-127. Allocation of state limit. (1) All of the aggregate amount of qualified mortgage bonds that may be issued during any calendar year in accordance with section 146 of the Internal Revenue Code, ~~of 1954 (26 U.S.C. 146),~~ as amended, is allocated to the board of housing.

(2) The board of housing may adopt standards for determining and may designate areas of chronic economic distress within the meaning of section 143(j)(3) of the Internal Revenue Code, ~~of 1954 (26 U.S.C. 143(j)(3)),~~ as amended.”

Section 134. Section 90-6-715, MCA, is amended to read:

“90-6-715. (Temporary) Special revenue account — use. (1) The treasure state endowment regional water system special revenue account may be used to provide matching funds to plan and construct regional drinking water systems in Montana. Each state dollar must be matched equally by local funds. Federal and state grants may not be used as a local match.

(2) Up to 25% of the local matching funds required under subsection (1) for the treasure state endowment regional water system may be in the form of debt that was incurred by local government entities included in the regional water system to construct individual drinking water systems before the individual systems were connected to the regional system. However, the amount of an individual entity's debt that may be used for matching funds is limited to the amount necessary to allow the entity to maintain its water service charges below the hardship standard established by the department through administrative rules adopted under 90-6-710(4).

(3) The funds in the account are further restricted to be used to finance regional drinking water systems that supply water to large geographical areas and serve multiple local governments, such as projects in north central Montana, from the waters of the Tiber reservoir, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of Havre, north of Dutton,

and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.

(4) The funds must be administered by the department of commerce for eligible projects. (Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)”

Section 135. Section 17, Chapter 414, Laws of 2001, is amended to read:

“Section 17. Termination. (1) [Sections 1 through 6, and 8, through 10, and 11] terminate December 31, 2006.

(2) [Section 9] terminates June 30, 2005.”

Section 136. Section 5, Chapter 522, Laws of 2001, is amended to read:

“Section 5. Termination — contingent termination. (1) ~~Except as provided in subsection (2), [this act]~~ [This act] terminates October 1, 2005.

(2) ~~If the office of surface mining of the United States department of the interior disapproves the changes to Montana’s program that are provided in [this act], then [this act] terminates 60 days after the department of environmental quality receives notification of that disapproval. The department of environmental quality shall provide a copy of the document that disapproves the changes to Montana’s program to the Montana code commissioner.”~~

Section 137. Repealer. Sections 5-18-107, 46-23-1033, 50-4-312, and 53-2-303, MCA, are repealed.

Section 138. Instructions to code commissioner. The code commissioner is instructed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 58th legislature.

Approved March 25, 2003

CHAPTER NO. 115

[SB 31]

AN ACT CLARIFYING THAT THE STATUTORY MILL LEVY LIMIT DOES NOT APPLY TO ANY LOCAL GOVERNMENT JUDGMENT LEVY; AND AMENDING SECTION 15-10-420, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-10-420, MCA, is amended to read:

“15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year’s value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

- (a) annexation of real property and improvements into a taxing unit;
- (b) construction, expansion, or remodeling of improvements;
- (c) transfer of property into a taxing unit;
- (d) subdivision of real property; and
- (e) transfer of property from tax-exempt to taxable status.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

- (i) a change in the boundary of a tax increment financing district;
- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or
- (iii) the termination of a tax increment financing district.

(b) For the purpose of subsection (3)(d), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonagricultural land as described in 15-6-133(1)(c).

(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

- (a) school district levies established in Title 20; or
- (b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the

department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

- (i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;
- (ii) a levy to repay taxes paid under protest as provided in 15-1-402; or
- (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Approved March 25, 2003

CHAPTER NO. 116

[SB 49]

AN ACT PROHIBITING THE DISCLOSURE OF MILITARY DISCHARGE CERTIFICATES TO UNAUTHORIZED INDIVIDUALS; AMENDING SECTIONS 2-6-401 AND 7-4-2614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-401, MCA, is amended to read:

"2-6-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Local government" means:

- (a) any city, town, county, consolidated city-county, or school district; and
- (b) any subdivision of an entity named in subsection (1)(a).

(2) (a) "Public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies of the record, regardless of physical form or characteristics, that has been made or received by any local government in connection with the transaction of official business and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any local government in the state of Montana, *except military discharge certificates filed under 7-4-2614.*

(b) The term includes electronic mail sent or received in connection with the transaction of official duties.

(3) "Records custodian" means any individual responsible for the proper filing, storage, or safekeeping of any public records."

Section 2. Section 7-4-2614, MCA, is amended to read:

"7-4-2614. Records of certificates of discharge from military service.

(1) It is the duty of the county clerk of any county of this state to record, without

charge and in a book kept for that purpose, the certificate of discharge of an honorably discharged person, regardless of sex, who served with the United States forces.

(2) *Military discharge certificates are confidential and are exempt from the provisions of Title 2, chapter 6. A military discharge certificate may be disclosed only to:*

(a) *the service member who filed the certificate;*

(b) *if the service member is deceased, the next of kin of the service member or a mortuary, as defined in 10-2-111, for the purposes of securing the burial benefits to which the service member is entitled;*

(c) *a veterans' service officer or a veterans' service organization, as defined in 10-2-111;*

(d) *the veterans' affairs division of the Montana department of military affairs; or*

(e) *any person with written authorization from the service member or from the next of kin of the service member, if the service member is deceased."*

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2003

CHAPTER NO. 117

[SB 88]

AN ACT PROVIDING INSTRUCTION FOR THE RENUMBERING AND CODIFICATION OF SECTION 85-2-521, MCA, CONCERNING REQUIREMENTS FOR COAL BED METHANE WELLS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Directions to code commissioner. Section 85-2-521 is intended to be renumbered and codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to 85-2-521. The code commissioner shall change any references to this chapter that are within 85-2-521 to "Title 85, chapter 2".

Approved March 25, 2003

CHAPTER NO. 118

[SB 94]

AN ACT PROVIDING FOR THE MULTIAGENCY CHILDREN'S SERVICES SYSTEM OF CARE INITIATIVE FOR HIGH-RISK CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCE TO BUILD STATE AND COMMUNITY CAPACITY TO SUPPORT THE APPROPRIATE CARE AND TREATMENT OF HIGH-RISK CHILDREN IN THE LEAST RESTRICTIVE AND MOST APPROPRIATE SETTING; AMENDING SECTIONS 52-2-301, 52-2-302, 52-2-303, 52-2-304, AND 52-2-308, MCA; REPEALING SECTIONS 52-2-305, 52-2-306, AND 52-2-307, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-2-301, MCA, is amended to read:

“52-2-301. State policy. The legislature declares that it is the policy of this state:

(1) ~~to the extent that funds are available and using a managed care system,~~ to provide for and encourage the development of a ~~continuum of stable system of care,~~ *including* quality education, treatment, and services for the *high-risk* children of this state with multiagency service needs, *to the extent that funds are available;*

(2) to serve *high-risk* children with multiagency service needs either in their homes or in the least restrictive *and most appropriate* setting ~~that is most appropriate to~~ for their needs ~~as provided in 52-2-306 and 52-2-307~~ in order to preserve the unity and welfare of the family, whenever possible, and to provide for their care and protection and mental, social, and physical development;

(3) to serve *high-risk* children with multiagency service needs within ~~the~~ their home, community, region, and state, whenever possible, and to use out-of-state providers as a last resort;

(4) to provide integrated services to *high-risk* children with multiagency service needs;

(5) to contain costs and reduce the use of high-cost, highly restrictive, out-of-home placements;

(6) to increase the capacity of communities to serve *high-risk* children with multiagency service needs in the least restrictive and most appropriate setting for their needs by promoting collaboration and cooperation among the agencies that provide services to children; and

(7) to prioritize available resources for meeting the essential needs of *high-risk* children with multiagency service needs.”

Section 2. Section 52-2-302, MCA, is amended to read:

“52-2-302. Definitions. The following definitions apply to this part:

(1) (a) ~~Child~~ *“High-risk child with multiagency service needs”* means a child under 18 years of age *who is seriously emotionally disturbed, who is placed or who imminently may be placed in an out-of-home setting, and who has a need for services that are available* collaboration from more than one state agency in order to address the child's needs.

(b) *The term does not include a child incarcerated in a state youth correctional facility.*

(2) *“Least restrictive and most appropriate setting”* means a setting in which a *high-risk* child with multiagency service needs is served:

(a) within the child's family or community; or

(b) outside the child's family or community where the needed services are not available within the child's family or community and where the setting is determined to be the most appropriate alternative setting based on:

(i) the safety of the child and others;

(ii) ethnic and cultural norms;

(iii) preservation of the family;

(iv) services needed by the child and the family;

(v) the geographic proximity to the child's family and community if proximity is important to the child's treatment ~~or does not adversely affect the child's treatment.~~

~~(3) "Local agency" means a local interagency staffing group formed pursuant to 52-2-203 or parents who are seeking placement of a child with multiagency service needs and who is suffering from mental, behavioral, or emotional disorders.~~

~~(4) "Managed care" means control of the provision of services to a defined population through a planned delivery system.~~

~~(5)~~(3) "Provider" means an agency of state or local government, a person, or a program authorized to provide treatment or services to a *high-risk* child with multiagency service needs who is suffering from mental, behavioral, or emotional disorders.

~~(6) "Request for proposals" has the meaning as defined in 18-4-301.~~

~~(7)~~(4) "Services" has the meaning as defined in 52-2-202.

(5) "System of care" means an integrated service support system that:

(a) emphasizes the strengths of the child and the child's family;

(b) is comprehensive and individualized; and

(c) provides for:

(i) culturally competent and developmentally appropriate services in the least restrictive and most appropriate setting;

(ii) full involvement of families and providers as partners;

(iii) interagency collaboration; and

(iv) unified care and treatment planning at the individual child level."

Section 3. Section 52-2-303, MCA, is amended to read:

~~"52-2-303. Multiagency service placement plan~~ **Children's system of care planning committee — membership — administration.** (1) There is a ~~multiagency service placement plan~~ children's system of care planning committee.

(2) The committee is composed of the following members:

(a) an appointee of the director of the department of public health and human services *representing the mental health program*;

(b) an appointee of the director of the department of public health and human services *representing child protective services*;

(c) an appointee of the director of the department of public health and human services *representing the developmental disability program*;

(d) an appointee of the director of the department of public health and human services *representing the chemical dependency treatment program*;

(e) other appointees considered appropriate by the director of the department of public health and human services who may be representatives of families of high-risk children with multiagency service needs, service providers, or other interested persons or governmental agencies;

~~(b)~~(f) an appointee of the superintendent of public instruction *representing education*; ~~and~~

~~(e)~~(g) an appointee of the director of the department of corrections;

- (h) *an appointee of the youth justice council of the board of crime control; and*
- (i) *an appointee of the supreme court representing the youth courts.*

(3) The committee is attached to the department of public health and human services for administrative purposes only as provided in 2-15-121.

(4) Except as provided in this section, the committee must be administered in accordance with 2-15-122."

Section 4. Section 52-2-304, MCA, is amended to read:

"52-2-304. Committee duties. (1) The committee established in 52-2-303 shall, *to the extent possible within existing resources:*

~~(1) assist the department in the development of the plan required by 52-2-305;~~

~~(2) develop policies aimed at allowing local agencies, through a managed care system, to access funding for services for children with multiagency service needs;~~

~~(a) that are currently provided by out-of-state providers; and~~

~~(b) who may have a future need to obtain services provided by out-of-state providers unless in-state services are developed; and~~

(a) *develop policies aimed at eliminating or reducing barriers to the implementation of a system of care;*

(b) *promote the development of an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting;*

~~(3)(c) advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in committing funds and resources for the implementation of unified plans of care for high-risk children with multiagency service needs and in making any determination that a high-risk child with multiagency service needs cannot be served by an in-state provider;~~

(d) *encourage the development of local interagency teams with participation from representatives from child serving agencies who are authorized to commit resources and make decisions on behalf of the agency represented;*

(e) *specify outcome indicators and measures to evaluate the effectiveness of the system of care; and*

(f) *develop mechanisms to elicit meaningful participation from parents, family members, and youth who are currently being served or who have been served in the children's system of care in the initiative.*

(2) *The committee shall coordinate responsibility for the development of a stable system of care for high-risk children with multiagency service needs that may include, as appropriate within existing resources:*

(a) *pooling funding from federal, state, and local sources to maximize the most cost-effective use of funds to provide services in the least restrictive and most appropriate setting to high-risk children with multiagency service needs;*

(b) *applying for federal waivers and grants to improve the delivery of integrated services to high-risk children with multiagency service needs;*

(c) providing for multiagency data collection and for analysis relevant to the creation of an accurate profile of the state's high-risk children with multiagency service needs in order to provide for the use of services based on client needs and outcomes and use of the analysis in the decisionmaking process;

(d) developing mechanisms for the pooling of human and fiscal resources; and

(e) providing training and technical assistance, as funds permit, at the local level regarding governance, development of a system of care, and delivery of integrated multiagency children's services.

(3) (a) In order to maximize integration and minimize duplication, the local interagency team, provided for in subsection (1)(d), may be facilitated in conjunction with an existing statutory team for providing youth services, including:

(i) a child protective team as provided for in 41-3-108;

(ii) a youth placement committee as provided for in 41-5-121 and 41-5-122;

(iii) a county interdisciplinary child information team or an auxiliary team as provided for in 52-2-211;

(iv) a foster care review committee as provided for in 41-3-115; and

(v) a local citizen review board as provided for in 41-3-1003.

(b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled."

Section 5. Section 52-2-308, MCA, is amended to read:

"52-2-308. Rulemaking. The department shall adopt rules necessary to implement 52-2-301 through ~~52-2-307~~ 52-2-304. The rules must be adopted in cooperation with the committee established in 52-2-303."

Section 6. Repealer. Sections 52-2-305, 52-2-306, and 52-2-307, MCA, are repealed.

Section 7. Effective date. [This act] is effective July 1, 2003.

Approved March 25, 2003

CHAPTER NO. 119

[HB 79]

AN ACT PROVIDING THAT AN INDIVIDUAL OR A NONPROFIT ORGANIZATION IS NOT LIABLE FOR CIVIL DAMAGES RESULTING FROM THE INDIVIDUAL'S OR ORGANIZATION'S PLACEMENT OF A SIGN OR MARKER WARNING OF A HAZARD IN WATER THAT IS UNDER THE JURISDICTION OF THE STATE AND THAT IS LEGALLY ACCESSIBLE TO THE PUBLIC; PROVIDING CRITERIA FOR THE PLACEMENT OF THE SIGNS OR MARKERS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO INFORM THE PUBLIC OF THE PLACEMENT, USE, AND SIGNIFICANCE OF WATER HAZARD SIGNS AND MARKERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Placement of warning sign in water legally accessible to public — liability limitation — role of department. (1) Unless acting with gross negligence, an individual or a nonprofit organization is not liable for civil damages resulting from the individual's or organization's placement of a sign or marker warning of a hazard in water legally accessible to the public as long as:

(a) the sign or marker is a white plastic milk bottle attached by a cord to the hazard or is a sign or marker approved by the department;

(b) the sign or marker contains or bears the name and telephone number of the individual or nonprofit organization that placed it;

(c) the individual or nonprofit organization maintains or removes the sign or marker when dictated by changing water conditions or seasonal changes; and

(d) the individual or nonprofit organization places the sign or marker only for the purpose of identifying hazards.

(2) (a) The provisions of this section are not intended to prohibit the placement of nonhazard signs or markers for water skiing, diving, safe channels, or swimming areas or for posting speed limits.

(b) The department shall inform members of the public involved in the recreational use of the waters of this state of the placement, use, and significance of signs or markers warning of hazards in the water that are placed by individuals or nonprofit organizations pursuant to the provisions of this section.

(3) The provisions of this section apply only to the waters of this state that have not been determined to be navigable for purposes of federal jurisdiction over navigation aids.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 26, 2003

CHAPTER NO. 120

[HB 178]

AN ACT AUTHORIZING AN EMPLOYER TO EMPLOY A CERTIFIED TEACHER, SPECIALIST, OR ADMINISTRATOR WHO HAS BEEN RECEIVING A RETIREMENT ALLOWANCE FOR AT LEAST 12 MONTHS TO BE REEMPLOYED WITHOUT THE LOSS OR INTERRUPTION OF TEACHER RETIREMENT BENEFITS; DEFINING "EMPLOYER"; REQUIRING AN EMPLOYER TO REPORT MONTHLY EMPLOYMENT DATA TO THE OFFICE OF PUBLIC INSTRUCTION AND THE TEACHERS' RETIREMENT SYSTEM; REQUIRING A REPORT BY THE OFFICE OF PUBLIC INSTRUCTION AND THE TEACHERS' RETIREMENT SYSTEM TO THE 2005 LEGISLATURE; AMENDING SECTION 19-20-804, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Reemployment of certain retired teachers, specialists, or administrators — limitations — employer defined. (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance, except a disability retirement allowance pursuant to part 9 of this chapter, for at least 12 months may be employed on a part-time or full-time basis by an employer without the loss or interruption of any payments of retirement benefits if:

(i) the member holds a valid certificate under the provisions of 20-4-106; and

(ii) the employer provides evidence to the office of public instruction each year that the employer has been unable to fill the position because the employer has received no applications for the open position or has not received an acceptance to an offer to fill the position from a nonretired teacher, specialist, or administrator;

(b) an employer shall by the 15th day of each month report to the office of public instruction and to the teachers' retirement system the name, social security number, and gross earnings of each teacher, specialist, or administrator employed in the preceding month under the provisions of this section;

(c) a retired member reemployed under this section is ineligible for active membership under 19-20-302; and

(d) the office of public instruction and the teachers' retirement system shall report to the appropriate committee in the 2007 legislative session regarding the implementation and results of this section.

(2) A retiree reemployed pursuant to this section must be considered an active member for the purposes of calculating retirement system contributions required under 19-20-604 and 19-20-605.

(3) A retiree reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-804(2) through (5).

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retiree is subject to all terms and conditions of the agreement and is entitled to all benefits and protections provided by the agreement.

(5) The board may adopt rules to implement this section.

(6) As used in this section, "employer" means a public school district, as defined in 20-6-101 and 20-6-701, youth correctional facilities, special education cooperatives, and the Montana school for the deaf and blind.

Section 2. Section 19-20-804, MCA, is amended to read:

"19-20-804. Allowance for service retirement. (1) ~~Upon~~ *Except as provided in [section 1], upon* termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409-.

(2) Except as provided in subsection (4), a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(3) ~~On Each year on July 1 of each year~~ following the member's retirement effective date, the maximum earning amount allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year.

(4) (a) Except as provided in [section 1] and subsection ~~(5)~~ (5) of this section, the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.

(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.

(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (4)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 8, and the provisions of Title 19, chapter 20, part 8, apply to [section 1].

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date — applicability. [This act] is effective July 1, 2003, and applies to teachers, specialists, and administrators who are employed for the school fiscal year beginning on or after [the effective date of this act] and who are earning more than one-third of the average final compensation provided for under 19-20-804.

Section 6. Termination. [This act] terminates July 1, 2006.

Approved March 25, 2003

CHAPTER NO. 121

[HB 212]

AN ACT ELIMINATING THE REQUIREMENT THAT AN AWARD OF PUNITIVE DAMAGES MUST BE UNANIMOUS AS TO LIABILITY AND AMOUNT; AMENDING SECTION 27-1-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in *Finstad v. W.R. Grace & Co.*, 2000 MT 228, 301 Mont. 240, 8 P.3d 778 (2000), the Montana Supreme Court held that the portion of section 27-1-221(6), MCA, which requires that an award of punitive damages must be unanimous as to liability and amount, violates Article II, section 26, of the Montana Constitution, guaranteeing a verdict by a two-thirds majority in all civil cases.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-221, MCA, is amended to read:

“27-1-221. Punitive damages — liability — proof — award. (1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if the defendant:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

(5) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less than beyond a reasonable doubt.

(6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury. ~~An award of punitive damages must be unanimous as to liability and amount.~~

(7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined by the jury in an immediate, separate

proceeding and be submitted to the judge for review as provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

(b) When an award of punitive damages is made by the judge, the judge shall clearly state the reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

- (i) the nature and reprehensibility of the defendant's wrongdoing;
- (ii) the extent of the defendant's wrongdoing;
- (iii) the intent of the defendant in committing the wrong;
- (iv) the profitability of the defendant's wrongdoing, if applicable;
- (v) the amount of actual damages awarded by the jury;
- (vi) the defendant's net worth;
- (vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;
- (viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and
- (ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, the judge may do so. The judge shall clearly state the reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

(8) This section is not intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2003

CHAPTER NO. 122

[HB 326]

AN ACT INCREASING THE ALLOWABLE TIME PERIOD FOR AUTHORIZATION OF A TEMPORARY CHANGE OF A WATER APPROPRIATION RIGHT IN THE UPPER CLARK FORK RIVER BASIN FROM 10 YEARS TO UP TO 30 YEARS UNDER CERTAIN CONDITIONS; AMENDING SECTION 85-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-407, MCA, is amended to read:

“85-2-407. (Temporary) Temporary changes in appropriation right.

(1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) Except as provided in subsection (9), a temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

- (i) during the initial temporary change application process;
- (ii) during the temporary change renewal process; and
- (iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

(9) If the quantity of water that is subject to a temporary change is made available from the development of a new water conservation or storage project, a temporary change in appropriation right pursuant to 85-2-408 or 85-2-439 may

be approved for a period equal to the expected life of the project, not to exceed 30 years. (Terminates June 30, 2005—sec. 3, Ch. 433, L. 2001.)

85-2-407. (Effective July 1, 2005) Temporary changes in appropriation right. (1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) A temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

- (i) during the initial temporary change application process;
- (ii) during the temporary change renewal process; and
- (iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates June 30, 2005.

Approved March 25, 2003

CHAPTER NO. 123

[HB 490]

AN ACT REVISING THE REQUIREMENT THAT A TAXPAYER FILE, FOR THE PURPOSE OF CLAIMING AN ADDITIONAL INCOME TAX EXEMPTION, WRITTEN DOCUMENTATION OF A DEPENDENT'S PERMANENT DISABILITY; PROVIDING THAT WRITTEN DOCUMENTATION OF A DEPENDENT'S PERMANENT DISABILITY BY A LICENSED PHYSICIAN REMAINS IN EFFECT IN SUBSEQUENT TAX YEARS FOR THE PURPOSE OF CLAIMING THE ADDITIONAL EXEMPTION; REQUIRING THE TAXPAYER TO INFORM THE DEPARTMENT OF REVENUE CONCERNING A CHANGE IN THE DEPENDENT'S ELIGIBILITY FOR THE ADDITIONAL EXEMPTION; ALLOWING THE DEPARTMENT OF REVENUE TO INQUIRE ABOUT THE DEPENDENT'S ELIGIBILITY FOR THE ADDITIONAL EXEMPTION; AMENDING SECTION 15-30-115, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-115, MCA, is amended to read:

“15-30-115. Physician's verification of disability required. *A For tax years beginning after December 31, 2002, a taxpayer claiming the exemption provided for in 15-30-114 shall provide with the taxpayer's income tax ~~statement~~ return written documentation by a licensed physician that the disability qualifies under 15-30-114. The written documentation remains in effect in subsequent tax years for the purpose of claiming the additional exemption unless there is a change in the dependent's physical circumstances to the extent that the dependent no longer qualifies for the additional exemption. The taxpayer shall inform the department of any change in the dependent's eligibility. The department may inquire by mail whether any material change has occurred in the dependent's physical circumstances that may affect the dependent's eligibility for the additional exemption and that may require additional written documentation by a licensed physician at any time that it considers necessary.*”

Section 2. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

Approved March 25, 2003

CHAPTER NO. 124

[HB 552]

AN ACT ALLOWING AN AFFILIATED GROUP THAT FILES A CONSOLIDATED RETURN AN AUTOMATIC 6-MONTH EXTENSION OF TIME FOR FILING A RETURN; AMENDING SECTION 15-31-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-141, MCA, is amended to read:

“15-31-141. Consolidated returns — computation and procedure. (1)

Corporations that are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b), permission to file a consolidated return is given by the department. For purposes of this section, a “unitary business operation” means one in which:

(a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) all of the corporations in the affiliated group operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

(3) The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.

(4) If the conditions of subsections (1) and (2) are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(5) ~~Any~~ A corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. ~~Any~~ A corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. If it appears to the department that any arrangement exists in a manner that improperly reflects the business done, the segregable assets, or the entire net income earned from business done in this state, the department may equitably adjust the tax in a manner that it may determine.

(6) (a) ~~When~~ If an affiliated group elects to file a consolidated return under the provisions of this section, a corporation of the affiliated group shall file a separate return for any portion of its ~~taxable year~~ tax period in which its income is not included in the consolidated return of the group. The separate return must be filed no later than the 15th day of the 5th month following the close of the ~~taxable year~~ tax period for which a consolidated return of the affiliated group is filed.

(b) (i) ~~A 1 month to 6 month extension of time is automatically allowed for filing a return if on or before the due date of the return, an application for an extension is made by the corporation. The application must be made on forms prescribed by the department.~~ A corporation is allowed an automatic extension of

time for filing its tax return of up to 6 months following the date prescribed for filing its return. The tax and interest must be paid when the return is filed. Interest must be added to the tax due as provided in 15-31-510(2).

(ii) The department may grant an additional extension of time for filing of a tax return whenever in its judgment good cause exists.”

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to tax returns due after [the effective date of this act].

Approved March 25, 2003

CHAPTER NO. 125

[SB 78]

AN ACT CLARIFYING WHEN A BOARD OF LAND COMMISSIONERS OR A DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ACTION UNDER TITLE 77, MCA, BECOMES A FINAL AGENCY ACTION UNDER THE MONTANA ENVIRONMENTAL POLICY ACT; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-201, MCA, is amended to read:

“75-1-201. General directions — environmental impact statements.

- (1) The legislature authorizes and directs that, to the fullest extent possible:
 - (a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;
 - (b) under this part, all agencies of the state, except the legislature and except as provided in subsection (2), shall:
 - (i) use a systematic, interdisciplinary approach that will ensure:
 - (A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment; and
 - (B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(IV);
 - (ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;
 - (iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.

(IV) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented; and

(G) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the

adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

(5) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (5) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(6) (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) *For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.*

(b) Any action or proceeding under subsection (6)(a)(ii) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(7) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(8) A project sponsor may request a review of the significance determination or recommendation made under subsection (7) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 26, 2003

CHAPTER NO. 126

[HB 32]

AN ACT ALLOWING THE HUNTING OF MOUNTAIN LIONS DURING WINTER OPEN SEASON WITH THE AID OF A DOG OR DOGS; ALLOWING THE HUNTING OF BOBCATS DURING TRAPPING SEASON WITH THE AID OF A DOG OR DOGS; ESTABLISHING A TRAINING SEASON DURING WHICH MOUNTAIN LIONS AND BOBCATS MAY BE PURSUED WITH A DOG OR DOGS; CREATING A CLASS D-3 RESIDENT HOUND TRAINING LICENSE AND ESTABLISHING THE CONDITIONS AND FEE FOR THE LICENSE; AMENDING SECTION 87-3-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-124, MCA, is amended to read:

“87-3-124. Dogs — restrictions on hunting — penalty for chasing hooved game animals. (1) (a) Except as provided in 87-3-127 and subsections (2) and (3) of this section, a person may not chase with a dog any of the game or fur-bearing animals as defined by the fish and game laws of this state.

(b) A person may take game birds during the appropriate open season with the aid of a dog. Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(c) Except as provided in subsection (2), any peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses a dog chasing, stalking, pursuing, attacking, or killing hooved game animals may destroy that dog, on public land or on private land at the request of the landowner, without criminal or civil liability.

(d) Except as provided in subsection (2), a person who purposely, knowingly, or negligently permits a dog to chase, stalk, pursue, attack, or kill hooved game animals is guilty of a misdemeanor and is subject to the penalty in 87-1-102(1). If the dog is not under the control of an adult at the time of the violation, the owner of the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not allowable, unless it is shown that at the time of the violation, the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large.

(2) A person may use trained or controlled dogs to chase or herd away game animals or fur-bearing animals to protect humans, lawns, gardens, livestock, or agricultural products, including growing crops and stored hay and grain. The dog may not be destroyed pursuant to subsection (1)(c).

(3) ~~(a) The commission has authority to allow and regulate the use of dogs for hunting and chasing mountain lion and bobcat.~~ *A person may hunt mountain lions during the winter open season, as established by the commission, with the aid of a dog or dogs.*

(b) A person may hunt bobcats during the trapping season, as established by the commission, with the aid of a dog or dogs.

(c) A resident who possesses a Class D-3 resident hound training license may pursue mountain lions and bobcats with a dog or dogs during a training season from December 2 of each year to April 14 of the following year.”

Section 2. Class D-3—resident hound training license. A person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of \$5, may receive a Class D-3 hound training license that entitles the holder to use a dog or dogs to aid in pursuing mountain lions or bobcats during the training season established in 87-3-124(3)(c).

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 26, 2003

CHAPTER NO. 127

[HB 55]

AN ACT EXPANDING THE AUTHORITY OF THE FISH, WILDLIFE, AND PARKS COMMISSION TO ADOPT RULES RESTRICTING NONRESIDENT MOUNTAIN LION HUNTERS IN ALL HUNTING DISTRICTS THAT QUALIFY AND ELIMINATING THE TERMINATION DATE FOR THIS AUTHORITY; AMENDING SECTION 87-1-301, MCA; AND REPEALING SECTION 3, CHAPTER 575, LAWS OF 2001.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-301, MCA, is amended to read:

“87-1-301. (Temporary) Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water;

(f) shall review and approve the budget of the department prior to its transmittal to the budget office; and

(g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

- (i) separate deer licenses from nonresident elk combination licenses;
- (ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;
- (iii) condition the use of the deer licenses; and
- (iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders for the biologically sound management of big game populations of deer and elk and to control the impacts of those deer and elk populations on uses of private property.

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts ~~in the administrative region designated by the department as region 1;~~ and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts ~~in the administrative region designated by the department as region 1, which may include limiting the number of nonresident hound handler permits.~~

(b) The commission shall consider, but is not limited to consideration of, the following factors:

- (i) harvest of lions by resident and nonresident hunters;
- (ii) history of quota overruns;
- (iii) composition, including age and sex, of the lion harvest;
- (iv) historical outfitter use;
- (v) conflicts among hunter groups;
- (vi) availability of public and private lands; and
- (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters. ~~(Terminates April 30, 2004—sec. 3, Ch. 575, L. 2001.)~~

~~**87-1-301. (Effective May 1, 2004) Powers of commission.** (1) The commission:~~

~~(a) shall set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;~~

~~(b) shall establish the hunting, fishing, and trapping rules of the department;~~

~~(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;~~

~~(d) must have the power within the department to establish wildlife refuges and bird and game preserves;~~

~~(e) shall approve all acquisitions or transfers by the department of interests in land or water;~~

~~(f) shall review and approve the budget of the department prior to its transmittal to the budget office; and~~

~~(g) shall review and approve construction projects whose estimated cost is more than \$1,000 but less than \$5,000.~~

~~(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.~~

~~(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.~~

~~(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:~~

~~(i) separate deer licenses from nonresident elk combination licenses;~~

~~(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;~~

~~(iii) condition the use of the deer licenses; and~~

~~(iv) limit the number of licenses sold.~~

~~(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders for the biologically sound management of big game populations of deer and elk and to control the impacts of those deer and elk populations on uses of private property.~~

~~(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:~~

~~(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and~~

~~(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission."~~

Section 2. Repealer. Section 3, Chapter 575, Laws of 2001, is repealed.

Approved March 26, 2003

CHAPTER NO. 128

[HB 89]

AN ACT EXTENDING THE SCHEDULE FOR COMPLETING TOTAL MAXIMUM DAILY LOADS FOR STREAMS LISTED IN 1997; AND AMENDING SECTION 75-5-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-703, MCA, is amended to read:

“75-5-703. Development and implementation of total maximum daily loads. (1) The department shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority ranking established by the department under 75-5-702. Each TMDL must be established at a level that will achieve compliance with applicable water quality standards and must include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between the TMDL and water quality standards. The department shall consider applicable guidance from the federal environmental protection agency, as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

(2) In establishing TMDLs under subsection (1), the department may establish waste load allocations for point sources and may establish load allocations for nonpoint sources, as set forth in subsection (8), and may allow for effluent trading. The department shall, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for nonpoint sources.

(3) Within ~~10~~ 15 years from May 5, 1997, the department shall develop TMDLs for all water bodies on the list of waters that are threatened or impaired, as that list read on May 5, 1997. This provision does not apply to water bodies that are subsequently added or removed from the list according to the provisions of 75-5-702. The department shall establish a schedule for completing the TMDLs within the ~~10-year~~ 15-year period established by this subsection. The schedule must also provide a reasonable timeframe for TMDL development for impaired and threatened water bodies that are listed subsequent to May 5, 1997, and are prioritized as set forth in 75-5-702.

(4) The department shall provide guidance for TMDL development on any threatened or impaired water body, regardless of its priority ranking, if the necessary funding and resources from sources outside the department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the department, the department shall ensure implementation of the TMDL according to the provisions of subsections (6) through (8).

(5) For water bodies listed under 75-5-702, the department shall provide assistance and support to landowners, local conservation districts, and

watershed advisory groups for interim measures that may restore water quality and remove the need to establish a TMDL, such as informational programs regarding control of nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in a way that gives credit for the pollution reduction efforts.

(6) After development of a TMDL and upon approval of the TMDL, the department shall:

- (a) incorporate the TMDL into its current continuing planning process;
- (b) incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and
- (c) assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices developed pursuant to subsection (2).

(7) Once the control measures identified in subsection (6) have been implemented, the department shall, in consultation with the statewide TMDL advisory group, develop a monitoring program to assess the waters that are subject to the TMDL to determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened. The monitoring program must be designed based on the specific impairments or pollution sources. The department's monitoring program must include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

(8) The department shall support a voluntary program of reasonable land, soil, and water conservation practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

(9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall conduct a formal evaluation of progress in restoring water quality and the status of reasonable land, soil, and water conservation practice implementation to determine if:

- (a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water conservation practice is necessary;
- (b) water quality is improving but a specified time is needed for compliance with water quality standards; or
- (c) revisions to the TMDL are necessary to achieve applicable water quality standards.

(10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

- (a) point source discharges to a listed water body may commence or continue, provided that:
 - (i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent applicable for the particular discharge, the provisions of 75-5-303;

- (ii) the discharge will not cause a decline in water quality for parameters by which the water body is impaired; and
 - (iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;
 - (b) the issuance of a discharge permit may not be precluded because a TMDL is pending;
 - (c) new or expanded nonpoint source activities affecting a listed water body may commence and continue ~~provided~~ if those activities are conducted in accordance with reasonable land, soil, and water conservation practices;
 - (d) for existing nonpoint source activities, the department shall continue to use educational nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).
- (11) This section may not be construed to prevent a person from filing an application or petition under 75-5-302, 75-5-310, or 75-5-312."

Approved March 26, 2003

CHAPTER NO. 129

[HB 97]

AN ACT DEFINING "TAXIDERMIST"; INCREASING THE ANNUAL TAXIDERMIST'S LICENSE FEE FROM \$15 TO \$50; AND AMENDING SECTION 87-4-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-201, MCA, is amended to read:

~~87-4-201. Taxidermist's license, fee, and penalty~~ Regulation of taxidermists. A (1) ~~As used in this section, "taxidermist" means a person who engages in conducting any taxidermy business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving, or preparing any all or part of the dead bodies of any wildlife or any part thereof.~~ A (1) *As used in this section, "taxidermist" means a person who*

engages in conducting any taxidermy business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving, or preparing any all or part of the dead bodies of any wildlife or any part thereof.

(2) ~~Before conducting the business of a taxidermist, a taxidermist shall must first obtain from the director department a taxidermist's license and pay an annual license fee of \$15 therefor \$50.~~ *Before conducting the business of a taxidermist, a taxidermist shall*

obtain from the director department a taxidermist's license and pay an annual license fee of \$15 therefor \$50.

(3) ~~Such person~~ *A taxidermist shall keep a written record of all the articles of wildlife in his the taxidermist's possession or control, including the following information:*

(a) ~~the kind and number of each, article of wildlife;~~ *the kind and number of each, article of wildlife;*

(b) ~~by whom owned, and the~~ *the name and residence of the owner, of the article of wildlife; and*

(c) *all the articles of wildlife shipped and to whom and where shipped.*

(4) ~~The above taxidermist shall keep the written record shall be kept required under subsection (3) for as long as such the articles of wildlife remain in the possession of the licensee taxidermist but in any event or at least 5 years, whichever is longer. These records shall must be open to inspection by any state game a warden at any reasonable time.~~ *The above taxidermist shall keep the written record shall be kept required under subsection (3) for as long as such the articles of wildlife remain in the possession of the licensee taxidermist but in any event or at least 5 years, whichever is longer. These records shall must be open to inspection by any state game a warden at any reasonable time.*

(5) ~~In all cases of~~ Upon conviction ~~of~~ for a violation of this section, the taxidermist's license of the person convicted may be revoked by the court."

Approved March 26, 2003

CHAPTER NO. 130

[HB 135]

AN ACT AUTHORIZING A SCHOOL DISTRICT TO USE ITS TUITION FUND TO PAY THE COSTS FOR A RESIDENT STUDENT WHO ENROLLS IN A DAY-TREATMENT PROGRAM UNDER AN APPROVED INDIVIDUALIZED EDUCATION PROGRAM AT A PRIVATE, NONSECTARIAN SCHOOL LOCATED IN OR OUTSIDE OF THE STUDENT'S RESIDENT DISTRICT; AMENDING SECTION 20-5-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-324, MCA, is amended to read:

"20-5-324. Tuition report and payment provisions — exemption. (1) At the close of the school term of each school fiscal year and before July 15, the trustees of a district shall report to the county superintendent:

(a) the name and district of residence of each child who is attending a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(b), (1)(d), or (1)(e);

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each reported child; ~~and~~

(d) the names, districts of attendance, and amount of tuition to be paid by the district for resident students attending public schools out of state; *and*

(e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools.

(2) The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides.

(3) Before July 30, the county superintendent shall report the information in ~~subsection~~ *subsections* (1)(d) *and* (1)(e) to the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection.

(4) Notwithstanding the requirements of subsection (5)(a), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) (a) When a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-320 or 20-5-321(1)(a) or (1)(b); *or when a child has approval to attend a day-treatment program under an*

approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, the district of residence shall finance the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(b) When a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-321(1)(c), the parent or guardian of the child shall finance the tuition and transportation amount.

(6) When a child has mandatory approval under the provisions of 20-5-321(1)(d) or (1)(e), the tuition and transportation obligation for an elementary school child attending a school outside of the child's district of residence must be financed by the basic county tax for elementary equalization, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the district of residence by the basic county tax for high school equalization, as provided in 20-9-333, for the child's county of residence.

(7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate elementary or high school county equalization fund provided for in 20-9-335 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

(8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB entitlement determined in subsection (3).

(9) (a) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(b) Any tuition receipts received for the current school fiscal year for a pupil who is a child with a disability that exceed the tuition amount received for a pupil without disabilities may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(c) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

(10) The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to tuition paid for attendance in school fiscal years beginning on or after July 1, 2003.

Approved March 26, 2003

CHAPTER NO. 131

[HB 142]

AN ACT REQUIRING THE STATE OFFICIAL RESPONSIBLE FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT TO CONSULT WITH ANY LOCAL GOVERNMENT THAT MAY BE DIRECTLY IMPACTED BY A PROJECT; AMENDING SECTIONS 75-1-104 AND 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-104, MCA, is amended to read:

“75-1-104. Specific statutory obligations unimpaired. ~~Nothing in Sections 75-1-103 or and 75-1-201 shall in any way do not~~ affect the specific statutory obligations of any agency of the state to:

- (1) comply with criteria or standards of environmental quality;
- (2) coordinate or consult with any ~~other~~ local government, other state agency, or federal agency; or
- (3) act or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.”

Section 2. Section 75-1-201, MCA, is amended to read:

“75-1-201. General directions — environmental impact statements.

- (1) The legislature authorizes and directs that, to the fullest extent possible:
 - (a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;
 - (b) under this part, all agencies of the state, except the legislature and except as provided in subsection (2), shall:
 - (i) use a systematic, interdisciplinary approach that will ensure:
 - (A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment; and
 - (B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(IV);
 - (ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;
 - (iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for

regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.

(IV) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented; and

(G) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action

in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved *and with any local government, as defined in 7-12-1103, that may be directly impacted by the project.* The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court

considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

(5) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (5) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(6) (a) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate. Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(b) Any action or proceeding under subsection (6)(a) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(7) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(8) A project sponsor may request a review of the significance determination or recommendation made under subsection (7) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to environmental impact statements commenced on or after [the effective date of this act].

Approved March 26, 2003

CHAPTER NO. 132

[HB 198]

AN ACT CLARIFYING THE LANGUAGE IN STATEMENTS OF IMPLICATION FOR BALLOT MEASURES; PROVIDING THAT STATEMENTS OF IMPLICATION MUST BE WRITTEN SO THAT A POSITIVE VOTE INDICATES SUPPORT FOR THE MEASURE AND A NEGATIVE VOTE INDICATES OPPOSITION TO THE MEASURE; AND AMENDING SECTION 13-27-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-312, MCA, is amended to read:

“13-27-312. Review of petition by attorney general — preparation of statements — fiscal note. (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form and legal sufficiency, as provided in 13-27-202, and, if the proposed ballot issue has an effect on the revenues revenue, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of the effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note.

(2) If the petition form is approved, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general shall prepare:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(3) The attorney general shall prepare a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue, ~~such~~ *and the statement to must* be used on the petition and ballot if the measure is placed on the ballot.

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure. *Statements of implication must be written so that a positive vote indicates support for the measure and a negative vote indicates opposition to the measure.*

(5) The statement of purpose, unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(6) The statements of implication must be placed beside the diagram provided for marking of the ballot in a manner similar to but not limited to the following example:

- FOR extending the right to vote to persons 18 years of age
- AGAINST extending the right to vote to persons 18 years of age

(7) If the petition is rejected as to form, the attorney general shall forward the comments to the secretary of state within 21 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement, if applicable, to the secretary of state within 21 days after receipt of the petition by the attorney general.

(8) If the petition is approved as to form, within 30 days of the approval, the attorney general shall forward to the secretary of state the determination regarding legal sufficiency, as provided in 13-27-202.”

Approved March 26, 2003

CHAPTER NO. 133

[HB 215]

AN ACT STANDARDIZING THE FEE FOR REINSTATEMENT OF A DRIVER'S LICENSE OR DRIVING PRIVILEGE AFTER SUSPENSION OR REVOCATION BY INCREASING THE FEE FOR REINSTATEMENT AFTER CERTAIN SUSPENSIONS OR REVOCATIONS FROM \$25 TO \$100; EXEMPTING THE HOLDER OF A COMMERCIAL DRIVER'S LICENSE FROM THE STANDARDIZED REINSTATEMENT FEE; AMENDING SECTIONS 61-5-215 AND 61-5-216, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. License reinstatement fee following license suspension or revocation. (1) Except as provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving privilege has been suspended or revoked shall pay a reinstatement fee of \$100 to the department to have the driver's license or driving privilege reinstated.

(2) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205 or 61-8-402 shall pay a reinstatement fee as required by 61-2-107. A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be reinstated without payment of a reinstatement fee.

(3) The department shall deposit the fees collected under subsection (1) in the general fund.

Section 2. Section 61-5-215, MCA, is amended to read:

“61-5-215. Provisional licenses prohibited — reinstatement fee. (1) ~~No~~ A provisional, restricted, or probationary license may *not* be issued upon a suspension under 61-5-214.

(2) ~~A person whose license is suspended under 61-5-214 shall pay a reinstatement fee of \$25 to the court for deposit in the state general fund.”~~

Section 3. Section 61-5-216, MCA, is amended to read:

“61-5-216. Reinstatement of license. Upon receipt of notification from the court that the operator has appeared, posted the bond, or paid the fine, costs, or restitution amounts and *if* the reinstatement fee *required under 61-2-107 or [section 1] has been paid*, the department shall ~~immediately~~ reinstate the license, unless the operator otherwise is not entitled to reinstatement.”

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 2, and the provisions of Title 61, chapter 5, part 2, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2003.

Section 6. Applicability. [This act] applies to the reinstatement of a driver's license or driving privilege that is suspended or revoked on or after July 1, 2003.

Approved March 26, 2003

CHAPTER NO. 134

[HB 250]

AN ACT REVISING THE DESIGN OF LICENSE PLATES FOR RECIPIENTS OF A PURPLE HEART MEDAL; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-332, MCA, is amended to read:

"61-3-332. (Temporary) Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

- (a) passenger vehicles, including automobiles, vans, and sport utility vehicles;
- (b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";
- (c) trucks, bearing the letter "T" or the word "TRUCK";
- (d) trailers, bearing the letters "TR" or the word "TRAILER";
- (e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";
- (f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";
- (g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";
- (h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and
- (i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in 61-3-479 and subsections (4)(c) and (4)(d) of this section, all number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For motorcycles, quadricycles, and light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

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

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated

by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

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

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number

on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of \$10. The additional fee must be distributed in accordance with the provisions of subsection (12).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:

(A) a special license plate under this section with the purple heart decal *and the words "combat wounded"* or a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is \$5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).

(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is \$5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the \$10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).

(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.

(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.

(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.

(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal *and the words "combat wounded"*.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of \$10.

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.

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

(12) Fees collected under this section must be deposited in the state general fund. (Terminates July 1, 2005—sec. 21, Ch. 402, L. 2001.)

61-3-332. (Effective July 1, 2005) Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates and collegiate license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

- (c) trucks, bearing the letter "T" or the word "TRUCK";
- (d) trailers, bearing the letters "TR" or the word "TRAILER";
- (e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";
- (f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";
- (g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";
- (h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and
- (i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in subsections (4)(c) and (4)(d), all number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For motorcycles, quadricycles, and light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the

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

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

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

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

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

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

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as

govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of \$10. The additional fee must be distributed in accordance with the provisions of subsection (12).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:

(A) a special license plate under this section with the purple heart decal *and the words "combat wounded"* or a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is \$5 and is in lieu of all other fees and taxes for that vehicle under this chapter

irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).

(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is \$5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the \$10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).

(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.

(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.

(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.

(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance

of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal *and the words "combat wounded"*.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of \$10.

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.

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

(12) Fees collected under this section must be deposited in the state general fund.”

Section 2. Effective date. [This act] is effective January 1, 2004.

Approved March 26, 2003

CHAPTER NO. 135

[HB 311]

AN ACT INCLUDING EGGNOG IN THE DEFINITION OF “CLASS I MILK” INSTEAD OF IN THE DEFINITION OF “CLASS II MILK” TO CORRELATE WITH FEDERAL STANDARDS; REQUIRING THE DEPARTMENT OF LIVESTOCK TO ASSESS A FEE FOR ALL CLASSES OF MILK SOLD BY A PERSON LICENSED BY THE DEPARTMENT TO BE USED FOR THE ADMINISTRATION OF THE MILK INSPECTION AND MILK DIAGNOSTIC LABORATORY FUNCTIONS OF THE DEPARTMENT; PROVIDING THAT THE FEE MUST BE ESTABLISHED COMMENSURATE WITH COSTS OF THE PROGRAM; REQUIRING LICENSEES TO REPORT TO THE DEPARTMENT ON A MONTHLY BASIS THE VOLUME OF MILK PRODUCED; AMENDING SECTIONS 81-23-101 AND 81-23-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-23-101, MCA, is amended to read:

“81-23-101. Definitions. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) “Board” means the board of milk control provided for in 2-15-3105.

(b) “Class I milk” includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, *eggnog*, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

(c) “Class II milk” includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, ~~eggnog~~, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(d) “Class III milk” includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) “Consumer” means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(f) “Dealer” means a producer, distributor, producer-distributor, jobber, or independent contractor.

(g) “Distributor” means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed

under this chapter, for resale over the counter at retail or for consumption on the premises.

(h) "Licensee" means a person who holds a license from the department.

(i) "Market" means an area of the state designated by the department as a natural marketing area.

(j) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which ~~is are~~ designated as grade A by a ~~duly~~ constituted health authority and ~~also includes~~ *including* those secretions that are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(k) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections at the Montana state prison.

(l) "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

(m) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(n) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(o) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(2) The department may assign new milk products, not expressly included in one of the classes defined in this section, to the class ~~which~~ *that* in its discretion it determines to be proper."

Section 2. Section 81-23-202, MCA, is amended to read:

"81-23-202. Licenses — disposition of income. (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department, as provided in 81-22-202, or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the department. The annual fee for the license from the department is \$2 and is due before July 1 and must be deposited by the department ~~to the credit of~~ *in* the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

(2) In addition to the annual license fee, the department shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) (a) In addition to the fees established in subsections (1) through (3), the department shall assess a fee of ~~14.97 cents~~ per hundredweight on the volume of ~~class I~~ all classes of milk produced and sold by a ~~producer~~ person licensed by the department to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department. *The fee must be established pursuant to 81-1-102(2). The board shall include this fee in its formulas for fixing by rule the minimum producer prices for class I milk in 81-23-302.*

(b) A person licensed by the department shall report to the department on a monthly basis the volume of milk produced. All reporting documentation must be submitted on forms approved or provided by the department.

(5) The assessments upon producer-distributors, producers, and distributors must be paid quarterly before January 15, April 15, July 15, and October 15 of each year. The amount of the assessments must be computed by applying the fee designated by the department and the fee established in subsection (4) to the volume of milk sold in the preceding calendar quarter.

(6) Failure of a *producer-distributor*, producer, ~~producer-distributor~~, or distributor to pay an assessment when due is a violation of this chapter, and a license under this chapter automatically terminates and is void. A terminated license must be reinstated by the department upon payment of a delinquency fee equal to 30% of the assessment that was due.

(7) All assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this chapter, must be paid out of the board money in that fund.

(8) The department may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year."

Section 3. Effective date. [This act] is effective July 1, 2003.

Approved March 26, 2003

CHAPTER NO. 136

[HB 126]

AN ACT PROVIDING FOR THE DISPOSITION OF CIVIL FINES, COSTS, AND FEES RECOVERED UNDER CERTAIN CONSUMER PROTECTION AND UNFAIR TRADE PRACTICES LAWS; PROVIDING FOR THE USE OF

THE MONEY TO FUND CONSUMER PROTECTION FUNCTIONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Disposition of civil fines, costs, and fees. (1) All civil fines, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

(2) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this part must be deposited into a state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

(3) All civil fines, costs, and fees received or recovered by a county attorney pursuant to this part must be paid to the general fund of the county where the action was commenced.

Section 2. Disposition of civil fines, costs, and fees. (1) All civil fines, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

(2) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this part must be deposited into a state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 30, chapter 14, part 2, and the provisions of Title 30, chapter 14, part 2, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 2003.

Approved March 26, 2003

CHAPTER NO. 137

[HB 144]

AN ACT REVISING CERTAIN UNDERGROUND STORAGE TANK LAWS; INCREASING THE TIME LIMIT FOR SUBMITTING CLEANUP EXPENSE REIMBURSEMENT REQUESTS; AMENDING DEFINITIONS; CHANGING THE ANNUAL TANK REGISTRATION FEES; REVISING REQUIREMENTS

FOR COMPLIANCE INSPECTIONS AND PERMITS; AMENDING SECTIONS 75-11-307, 75-11-503, 75-11-505, AND 75-11-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-307, MCA, is amended to read:

“75-11-307. Reimbursement for expenses caused by a release. (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except if the corrective action plan addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4); and

(h) expenses for work completed by or on behalf of the owner or operator more than ~~2~~ 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid

to third parties for bodily injury or property damage. *The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.*

(3) An owner or operator may designate a person as an agent to receive the reimbursement if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (5):

(a) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$495,000:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993; and

(b) for all other releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$982,500:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of \$1 million, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 2. Section 75-11-503, MCA, is amended to read:

"75-11-503. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance into or onto the land or water so that the regulated substance or any constituent of the regulated substance may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(5) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.

(6) "Storage" means the actual or intended containment of regulated substances, either on a temporary basis or for a period of years.

(7) "Underground storage tank" or "tank":

(a) means, except as provided in subsections (7)(b)(i) through (7)(b)(xi):

(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; ~~and~~

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under ground; *and*

(iii) *ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank;*

(b) does not include:

(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less; and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less; and that is used for storing heating oil for consumptive use on the premises where it is stored;

(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

(iv) a septic tank;

(v) a pipeline facility, including gathering lines, regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection (7)(b)(v)(A) or (7)(b)(v)(B), if the facility is intrastate;

(vi) a surface impoundment, pit, pond, or lagoon;

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor;

(xi) any pipe connected to a tank described in subsections (7)(b)(i) through (7)(b)(ix); or

(xii) underground pipes connected to an aboveground storage tank at a petroleum refinery that is subject to ~~facility-wide~~ *facilitywide* corrective action permit provisions under 75-10-406 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended.”

Section 3. Section 75-11-505, MCA, is amended to read:

“75-11-505. Administrative rules. The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

(1) reporting by owners and operators;

(2) financial responsibility;

(3) release detection, prevention, and corrective action;

(4) procedures and standards for the issuance, *nonissuance*, *renewal*, *nonrenewal*, *modification*, *revocation*, *suspension*, and enforcement of permits authorizing the operation of underground storage tanks;

(5) standards for design, construction, installation, and closure;

(6) development of a schedule of annual fees, ~~not to exceed \$70 for a tank over 1,100 gallons and not to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank registration, not to exceed \$108 for a tank over 1,100 gallons and not to exceed \$36 for a tank 1,100 gallons or less, for each tank, for tank registration~~ to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.

(7) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

(8) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.”

Section 4. Section 75-11-509, MCA, is amended to read:

“75-11-509. Inspections — permits. (1) The owner or operator of an *active* underground storage tank must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years thereafter by an

inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground storage tank inspections. The inspector may not be:

(a) the owner or operator of the tank;

(b) an employee of the owner or operator; or

(c) for the first inspection required by this subsection (1) and for a period of 3 years after the installation or modification of the tank was completed, the installer who installed or modified the tank and whose name or signature was on the permit required by 75-11-212.

(2) The owner or operator of an inactive underground storage tank shall comply with requirements for testing, inspection, recordkeeping, and reporting provided in rules adopted pursuant to this part.

(3) The department may by rule authorize temporary permits for the installation, testing, and operation of underground storage tanks. The requirements in subsection (8) for a 3-year permit term and for permit issuance only after inspection by a licensed inspector do not apply to temporary permits.

~~(2)~~(4) The department shall by rule provide:

(a) requirements for the scope and timing of inspections; and

(b) requirements for testing, inspection, recordkeeping, and reporting for inactive tanks to ensure that these tanks do not pose a threat to public health, safety, or the environment while inactive or upon their return to active status.

~~(3)~~(5) The inspector shall provide the owner or operator with an inspection report that meets the requirements of rules adopted by the department to ensure compliance with this part and rules adopted pursuant to this part.

~~(4)~~(6) The owner or operator shall retain the original inspection report and mail a copy to the department.

~~(5)~~(7) If the inspection report indicates violations, the owner or operator shall correct the violations and obtain a followup inspection. Followup inspection reports must be provided to the owner or operator and to the department.

~~(6)~~(8) A person may not place a regulated substance in an underground storage tank unless the owner or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the department an inspection report by a licensed inspector. ~~who certifies that~~ *Except as provided in subsection (9), prior to issuing or renewing a permit, the department shall determine, on the basis of the inspection report and other relevant information, that the operation and maintenance of the tank was in compliance with this part and rules adopted pursuant to this part on the date of inspection.*

(9) The department may issue and renew permits for tanks that are not in full compliance with the operation and maintenance requirements of this part and rules adopted pursuant to this part only if the department requires, in a compliance order issued pursuant to 75-11-512 or 75-11-525, that the noncompliance be corrected at the earliest practicable time. The department may also take other enforcement actions, including actions for penalties under this chapter, and may pursue any other remedy available to the department to address noncompliance with this part or with rules, permits, or orders issued pursuant to this part.

(10) *The department may determine to not issue or not renew a permit for a tank if the department finds that there has been significant noncompliance with this part or with rules, permits, or orders issued pursuant to this part. If the department proposes to not issue or not renew a permit, it must have a written notice letter served personally or by certified mail on the owner or operator informing the owner or operator of the reason for the action. The owner or operator may request a hearing before the board. The hearing request must be in writing and must be filed with the board no later than 30 days after the service of the notice letter. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.*

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Applicability. [Section 1] applies to all claims for reimbursement of expenses on file with the department of environmental quality on [the effective date of this act].

Approved March 26, 2003

CHAPTER NO. 138

[HB 164]

AN ACT REVISING CERTAIN PROVISIONS RELATED TO PERMANENT TOTAL DISABILITY BENEFITS; REMOVING THE PROVISIONS LIMITING A WORKER TO A MAXIMUM OF 10 BENEFIT ADJUSTMENTS AND LIMITING THE ADJUSTMENT PERCENTAGE INCREASE TO 3 PERCENT; AMENDING SECTION 39-71-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-702, MCA, is amended to read:

“39-71-702. Compensation for permanent total disability. (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker’s permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability must be supported by a preponderance of objective medical findings.

(3) Weekly compensation benefits for an injury resulting in permanent total disability are 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state’s average weekly wage at the time of injury.

(4) In cases in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. ~~A worker may not receive more than 10 adjustments.~~ The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year ~~or 3%, whichever is less.~~

(6) A worker may not receive both wages and permanent total disability benefits without the written consent of the insurer. A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

(7) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to injuries that occur on or after [the effective date of this act].

Approved March 26, 2003

CHAPTER NO. 139

[HB 172]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

"17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~February 9, 2004~~ [the effective date of this act]."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2003

CHAPTER NO. 140

[HB 180]

AN ACT ALLOCATING LIQUOR LICENSE FEES AND BEER AND WINE TAX REVENUE TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; STATUTORILY APPROPRIATING FUNDS FOR DISTRIBUTION TO STATE-APPROVED PRIVATE AND PUBLIC CHEMICAL DEPENDENCY PROGRAMS FOR GRANTS AND FOR TREATMENT OF PERSONS WITH CO-OCCURRING SERIOUS MENTAL ILLNESS AND CHEMICAL DEPENDENCY; AMENDING SECTIONS 17-7-502, 53-24-108, 53-24-204, AND 53-24-206, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-108; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)”

Section 2. Section 53-24-108, MCA, is amended to read:

“53-24-108. (Temporary) Use of funds generated by taxation on alcoholic beverages. (1) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 and allocated to the department to be used as matching funds for the Montana medicaid program and to be used in state-approved private or public programs whose function is the treatment, rehabilitation, and prevention of alcoholism, which for the purposes of this section includes chemical dependency, may be distributed in any of the following ways:

(a) as payment of fees for alcoholism services provided by state-approved private or public alcoholism programs and licensed hospitals for detoxification services;

(b) as grants to state-approved private or public alcoholism programs; or

(c) as matching funds for the Montana medicaid program administered by the department that are used for the treatment of alcoholism, chemical dependency, and related illnesses.

(2) (a) Services provided by funding under this chapter may include treatment and rehabilitation for persons with co-occurring mental illness and chemical dependency.

(b) The department shall distribute at least \$1 million to state-approved chemical dependency programs during fiscal year 2003. During fiscal year 2003, the department may use other sources of funding to meet its obligations under this subsection (2)(b). At least \$730,000 of funds distributed under this subsection (2)(b) must be derived from revenue generated by 16-1-404, 16-1-406, and 16-1-411 and must be distributed to counties, as provided in 53-24-206(3)(b), for the private or public programs approved pursuant to 53-24-208. The remaining balance may consist of a combination of funds generated by taxation on alcoholic beverages and other funds available to the department.

(3) A person operating a state-approved alcoholism program may not be required to provide matching funds as a condition of receiving a grant under subsection (1).

(4) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(5) A person receiving funding under this section to support operation of a state-approved alcoholism program may not refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(6) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess must be reported to the grantor.

(c) The excess must be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(7) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 for the treatment, rehabilitation, and prevention of alcoholism that has not been encumbered for those purposes by the counties of Montana or the department must be returned to the state special revenue fund for the treatment,

rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and must be distributed by the department the following year as provided in 53-24-206(3)(b). (Terminates July 1, 2003—sec. 6, Ch. 470, L. 2001; sec. 3, Ch. 21, Sp. L. August 2002.)

53-24-108. (Effective July 1, 2003) Use of funds generated by taxation on alcoholic beverages. (1) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 and allocated to the department to be used in state-approved private or public programs whose function is the treatment, rehabilitation, and prevention of alcoholism, which for the purposes of this section includes chemical dependency, ~~may be distributed in any of the following ways must be distributed as follows:~~

~~(a) as payment of fees for alcoholism services provided by state-approved private or public alcoholism programs and licensed hospitals for detoxification services;~~

~~(b)(a) 20% is statutorily appropriated, as provided in 17-7-502, to be allocated as provided in 53-24-206(3)(b), and must be distributed as grants to state-approved private or public alcoholism programs; or~~

~~(b) 6.6% is statutorily appropriated, as provided in 17-7-502, to be distributed to state-approved private or public alcoholism programs that provide services for treatment and rehabilitation for persons with co-occurring serious mental illness and chemical dependency; and~~

~~(c) the remainder of funds not statutorily appropriated in subsections (1)(a) and (1)(b) may be distributed:~~

~~(i) as payment of fees for alcoholism services provided by state-approved private or public alcoholism programs and licensed hospitals for detoxification services; or~~

~~(ii) as matching funds for the Montana medicaid program administered by the department that are used for alcoholism and chemical dependency programs.~~

(2) A person operating a state-approved alcoholism program may not be required to provide matching funds as a condition of receiving a grant under subsection (1) (a).

(3) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(4) A person receiving funding under this section to support operation of a state-approved alcoholism program may not refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(5) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess must be reported to the grantor.

(c) The excess must be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(6) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 for the treatment, rehabilitation, and prevention of alcoholism that has not been encumbered for those purposes by the counties of Montana or the department must be returned to the state special revenue fund for the treatment, rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and must be distributed by the department the following year as provided in 53-24-206(3)(b)."

Section 3. Section 53-24-204, MCA, is amended to read:

"53-24-204. Powers and duties of department. (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-108 and 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to persons with a chemical dependency;

(f) establish criteria to be used for the development of new programs;

(g) encourage planning for the greatest ~~utilization~~ use of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

(h) cooperate with the board of pardons and parole in establishing and conducting programs to provide treatment for intoxicated persons and persons with a chemical dependency in or on parole from penal institutions;

(i) establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses; and

(j) assist all interested public agencies and private organizations in developing education and prevention programs for chemical dependency."

Section 4. Section 53-24-206, MCA, is amended to read:

"53-24-206. Administration of financial assistance. (1) The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of chemical

dependency or related social problems under laws and rules of the United States, any other state, or any private organization.

(2) The department may cooperate with any other government agency or private organization in programs on chemical dependency or related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

(3) (a) In administering proceeds derived from the liquor license tax, the beer license tax, or the wine tax, the department shall distribute those funds appropriated by the legislature. Money that is appropriated for distribution to approved private or public programs on a discretionary basis must be distributed to those programs that can demonstrate that:

(i) the program is achieving the goals and objectives mutually agreed upon by the program and the department; and

(ii) the receipt of additional funds would be justified.

(b) The remainder of the proceeds *that are not appropriated, as provided in subsection (3)(a), or that are not statutorily appropriated in 53-24-108(1)(b)* must be distributed to the counties for use by approved private or public programs. The distribution of these proceeds is statutorily appropriated as provided in 17-7-502 and must be distributed in the following manner:

(i) Eighty-five percent must be allocated according to the proportion of each county's population to the state's population according to the most recent United States census.

(ii) Fifteen percent must be allocated according to the proportion of the county's land area to the state's land area.

(c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems of alcoholism and chemical dependency."

Section 5. Effective date. [This act] is effective July 1, 2003.

Approved March 26, 2003

CHAPTER NO. 141

[HB 240]

AN ACT PROVIDING THAT THE WRITTEN JUDGMENT IN A CRIMINAL CASE MUST BE ENTERED ON THE RECORD WITHIN 30 DAYS AFTER ORAL PRONOUNCEMENT OF THE DISPOSITION OF THE CASE; REQUIRING AN ORDER SIGNED BY THE SENTENCING JUDGE ON THE DATE OF ORAL PRONOUNCEMENT OF SENTENCE STATING THAT THE DEFENDANT IS SENTENCED TO THAT PLACE FOR IMPRISONMENT, COMMITMENT, PLACEMENT, OR EXECUTION, AS THE CASE MAY BE; PROVIDING THAT THE ORDER IS AUTHORITY FOR THAT PLACE TO HOLD THE DEFENDANT PENDING RECEIPT BY THAT PLACE OF A COPY OF THE WRITTEN JUDGMENT; AND AMENDING SECTIONS 46-18-116 AND 46-19-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-116, MCA, is amended to read:

“46-18-116. Judgment — conflict between written judgment and oral pronouncement — correction of factually erroneous sentence or judgment. (1) The judgment must set forth the plea, *the* verdict or finding, and the adjudication. If the defendant is convicted, it must set forth the sentence or other disposition. The *written* judgment must be signed and *must be* entered on the record *within 30 days after the oral pronouncement of the disposition of the case*. At the time that the judgment is filed, the prosecutor of the county in which the sentence was imposed shall serve a copy of the judgment on the defendant. The written judgment must include a statement of the rights set forth in subsection (2).

(2) If a written judgment and an oral pronouncement of sentence or other disposition conflict, the defendant or the prosecutor in the county in which the sentence was imposed may, within 120 days after filing of the written judgment, request that the court modify the written judgment to conform to the oral pronouncement. The court shall modify the written judgment to conform to the oral pronouncement at a hearing, and the defendant must be present at the hearing unless the defendant waives the right to be present or elects to proceed pursuant to 46-18-115. The defendant and the prosecutor waive the right to request modification of the written judgment if a request for modification of the written judgment is not filed within 120 days after the filing of the written judgment in the sentencing court.

(3) The court may correct a factually erroneous sentence or judgment at any time. Illegal sentences must be addressed in the manner provided by law for appeal and postconviction relief.”

Section 2. Section 46-19-101, MCA, is amended to read:

“46-19-101. Commitment of defendant. Upon ~~rendition of judgment~~ *after oral pronouncement of a sentence imposing punishment of imprisonment, commitment to the department of corrections, placement in a prerelease center, community corrections facility, or other place of confinement, or death, the court shall commit the defendant to the custody of the sheriff, who shall deliver the defendant to the place of his confinement, commitment, or execution and give that place an order, which must be signed by the sentencing judge on the date of oral pronouncement of sentence, stating that the defendant is sentenced to that place for imprisonment, commitment, placement, or execution, as the case may be. The order is authority for that place to hold the defendant pending receipt by that place of a copy of the written judgment.*”

Approved March 26, 2003

CHAPTER NO. 142

[HB 246]

AN ACT REQUIRING A PEACE OFFICER WHO IS ABOUT TO INTERROGATE A PERSON WHO IS IN CUSTODY TO GIVE THE PERSON THE MIRANDA WARNING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Miranda warning prior to custodial interrogation. Before interrogating a person who is in custody, a peace officer shall inform the person that the person has the right to remain silent, that anything the person says can be used against the person in a court of law, that the person has the right to

speak to an attorney and to have an attorney present during any questioning, and that if the person cannot afford an attorney, one will be provided for the person at no cost to the person. A person who is stopped under 46-5-401 and 46-5-402 is not in custody unless the stop goes beyond the purposes of those sections.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 6, part 1, and the provisions of Title 46 apply to [section 1].

Approved March 27, 2003

CHAPTER NO. 143

[HB 280]

AN ACT ALLOWING FOR THE USE OF ORIGINAL MONTANA LICENSE PLATES ON MOTOR VEHICLES THAT ARE 25 YEARS OLD OR OLDER AND THAT ARE USED FOR GENERAL TRANSPORTATION PURPOSES; REQUIRING PERMANENT REGISTRATION OF GENERAL TRANSPORTATION COLLECTOR'S ITEM VEHICLES; DEFINING "GENERAL TRANSPORTATION COLLECTOR'S ITEM"; AND AMENDING SECTIONS 61-3-412 AND 61-3-562, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-412, MCA, is amended to read:

"61-3-412. Display of original Montana license plates on collector's item vehicle and general transportation collector's item vehicles — definition — validation. (1) As used in [section 2] and this section, "original Montana license plate" means a license plate issued according to the provisions of 61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle on which the license plate is authorized to be displayed.

(2) Notwithstanding the provisions of 61-3-332, the department shall authorize the owner of a motor vehicle registered as provided in 61-3-411 or [section 2] to display original Montana license plates, with validation as required in [section 2] or subsection (3) of this section, after:

(a) payment of the fee required in subsection (5);

(b) inspection by a highway patrol officer of the original Montana license plate to be displayed on the motor vehicle and, upon payment of a \$5 fee, receipt of the highway patrol officer's certification that the officer has determined that:

(i) the license plate is legible and meets the requirements of subsection (1); and

(ii) in the case of a license plate intended for use on a general transportation collector's item, the license plate is visible at night; ~~and~~

(c) receipt of an application by the owner of the motor vehicle as provided for in 61-3-411 or [section 2]; and

(d) in the case of general transportation collector's item applications, certification from the department that a duplicate license plate number does not exist among currently issued license plates.

(3) If the owner of a vehicle registered under the provisions of 61-3-314 meets the requirements of subsection (2), the department shall:

(a) file the application and register information on the motor vehicle in the manner prescribed in 61-3-101; and

(b) issue a validating decal inscribed with:

(i) a unique number; and

(ii) the letter:

(A) "P" to designate vehicles described in 61-3-411(2)(a); or

(B) "V" to designate vehicles described in 61-3-411(2)(b).

(4) The owner of the motor vehicle shall permanently affix the validating decal to the windshield of the collector's item motor vehicle or, if a windshield does not exist, to another prominent and visible position on the vehicle.

(5) The owner of the motor vehicle shall pay to the department with the application required under this section a one-time special collector's item motor vehicle license fee of \$20."

Section 2. Registration of motor vehicle as general transportation collector's item — definition — permanent registration required. (1) For the purposes of 61-3-412 and this section, a "general transportation collector's item" is a motor vehicle that is 25 years old or older that is used for general transportation purposes.

(2) An owner of a general transportation collector's item who wishes to display original Montana license plates on the motor vehicle shall file with the department an application for the registration of the motor vehicle. The application must state:

(a) the name and address of the owner;

(b) the year and number of the license plate the applicant wishes to use; and

(c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle.

(3) Upon receipt of an application for registration of a general transportation collector's item, the department shall compare the number of the license plate that the applicant intends to use with the license plate numbers assigned to currently registered vehicles. The department may reject an application if the number the applicant intends to use matches a number that is assigned to a currently registered vehicle. If the department approves the application, the department shall file the application and register the motor vehicle in the manner specified in 61-3-101.

(4) Once an application is approved, appropriate fees are paid, and the requirements provided in 61-3-412(2) are met, an owner of a general transportation collector's item shall permanently register the motor vehicle as provided in 61-3-562 and shall display on the motor vehicle's license plate a decal indicating that the motor vehicle has been permanently registered.

Section 3. Section 61-3-562, MCA, is amended to read:

"61-3-562. Permanent registration — transfer of vehicle ownership — rules. (1) (a) The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-561, may permanently register the vehicle upon payment of a \$50 registration fee, the applicable registration and license

fees under 61-3-321 *and* 61-3-412, and an amount equal to five times the applicable fees imposed for each of the following:

- (i) junk vehicle disposal fees under 15-1-122(3)(a);
- (ii) weed control fees under 15-1-122(3)(b);
- (iii) the former county motor vehicle computer fees under 61-3-511;
- (iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;
- (v) if applicable, license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406;
- (vi) if applicable, the amateur radio operator license plate fee under 61-3-422;
- (vii) if applicable, the annual scholarship donation fee under 61-3-465; and
- (viii) senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional \$2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) distribute the \$50 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the department of revenue the amounts collected under this section, other than the local option vehicle tax or flat fee, for the purposes of 61-3-321(3) and 61-10-201. The county treasurer shall retain the local option vehicle tax or flat fee.

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of ownership under 61-3-201 and file an application for registration under 61-3-303. (Subsection (1)(b) terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)”

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 2].

Approved March 26, 2003

CHAPTER NO. 144

[HB 305]

AN ACT PROVIDING A STATUTORY DEFINITION OF "CURRENT TERM" AS USED IN MONTANA'S CONSTITUTIONAL PROVISION ON TERM LIMITS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition of current term for purposes of term limits. As used in Article IV, section 8, of the Montana constitution, "current term" means the term served after regular election to a full term to an office and does not include time served in an appointed or an elected capacity in an office to finish the term of the original incumbent after a vacancy has occurred.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 16, and the provisions of Title 2, chapter 16, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2003

CHAPTER NO. 145

[HB 339]

AN ACT CLARIFYING WHICH COUNTIES MUST HAVE COUNTY AUDITORS AND WHICH COUNTIES MAY HAVE COUNTY AUDITORS; ALLOWING COMMISSIONERS IN CERTAIN COUNTIES THE DISCRETIONARY AUTHORITY TO PROVIDE FOR AN ELECTED OR APPOINTED COUNTY AUDITOR; AMENDING SECTION 7-6-2401, MCA; AND REPEALING SECTION 7-6-2402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2401, MCA, is amended to read:

"7-6-2401. Creation of office of county auditor. (1) ~~Except as provided in subsection (2), the~~ The office of county auditor exists in all counties of the first, second, third, or fourth class *and having a population in excess of 15,000.*

(2) ~~The provisions of 7-6-2401 through 7-6-2413 do not apply to County commissioners in counties having a population of less than 15,000 persons according to the most recent federal census to which subsection (1) does not apply may create a county auditor's position, either as a full-time or a part-time position or in combination with another position pursuant to 7-4-2301.~~

(3) ~~The provisions of 7-6-2403 through 7-6-2412 do not apply to counties that do not have county auditors."~~

Section 2. Repealer. Section 7-6-2402, MCA, is repealed.

Approved March 27, 2003

CHAPTER NO. 146

[HB 402]

AN ACT INCREASING THE MAXIMUM IMPRISONMENT PENALTIES AND REQUIRING OFFENDER REGISTRATION FOR THE CRIME OF OPERATING AN UNLAWFUL CLANDESTINE ILLEGAL DRUG LABORATORY; AND AMENDING SECTIONS 45-9-132 AND 46-23-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-9-132, MCA, is amended to read:

“45-9-132. Operation of unlawful clandestine laboratory — penalties. (1) A person commits the offense of operation of an unlawful clandestine laboratory if the person purposely or knowingly engages in:

(a) the procurement, possession, or use of chemicals, precursors to dangerous drugs, supplies, equipment, or a laboratory location for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110;

(b) the transportation of or arranging for the transportation of chemicals, precursors to dangerous drugs, supplies, or equipment for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110; or

(c) the setting up of equipment or supplies in preparation for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110.

(2) Except as provided in subsections (3) and (4), a person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed \$25,000, be imprisoned in a state prison for a term not to exceed ~~20~~ 40 years, or both.

(3) A person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed \$50,000, be imprisoned in a state prison for a term not to exceed ~~25~~ 50 years, or both, if 46-1-401 is complied with and the operation of an unlawful clandestine laboratory or any phase of the operation:

(a) created a substantial risk of death of or serious bodily injury to another;

(b) took place within 500 feet of a residence, business, church, or school; or

(c) took place in the presence of a person less than 18 years of age.

(4) A person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed \$100,000, be imprisoned in a state prison for a term not to exceed ~~40~~ 50 years, or both, if 46-1-401 is complied with and the operation of an unlawful clandestine laboratory or any phase of the operation involved the use of a firearm or booby trap.”

Section 2. Section 46-23-502, MCA, is amended to read:

“46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) “Department” means the department of corrections provided for in 2-15-2301.

(2) “Mental abnormality” means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(4) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(6) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-502(3), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim), 45-5-603(1)(b), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (6)(a).

(7) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

(9) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-401, ~~or~~ 45-6-103, or 45-9-132; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (9)(a)."

Approved March 27, 2003

CHAPTER NO. 147

[HB 436]

AN ACT ELIMINATING COMPLIANCE WITH THE MONTANA ENVIRONMENTAL POLICY ACT FOR STATE LAND LEASES THAT ARE SUBJECT TO FURTHER PERMITTING REQUIREMENTS; AMENDING SECTION 77-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-121, MCA, is amended to read:

"77-1-121. Environmental review — exemptions. (1) (a) ~~The~~ *Except as provided in subsection (1)(b), the department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing*

provisions within Title 77 only if the department is actively proposing to issue a sale, exchange, right-of-way, easement, placement of improvement, lease, license, or permit, or is acting in response to an application for an authorization for such a proposal.

(b) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when issuing any lease that expressly states that the lease is subject to further permitting under any of the provisions of Title 75 or 82.

(2) Except for rulemaking and as provided in subsection (1), the department and board are otherwise exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77, including but not limited to the issuance of lease renewals. The department and board do not have an obligation to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 if the department or board chooses not to take any action, even though either may have the authority to take an action.

(3) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions, including preparing plans or proposals, in relation to and in compliance with the following local government actions:

- (a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1;
- (b) development or adoption of zoning regulations;
- (c) review of a proposed subdivision pursuant to Title 76, chapter 3;
- (d) actions related to annexation;
- (e) development or adoption of plans or reports on extension of services; and
- (f) other actions that are related to local planning.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2003

CHAPTER NO. 148

[HB 455]

AN ACT PROVIDING FOR THE INSPECTION AND REGULATION OF NONCOMMERCIAL FEEDS; CLARIFYING THAT THE DEPARTMENT OF AGRICULTURE HAS ACCESS TO PREMISES IN ADDITION TO COMMERCIAL ESTABLISHMENTS TO CONDUCT FEED INSPECTIONS FOR THE PURPOSE OF PROTECTING HUMAN AND ANIMAL HEALTH AND SAFETY; AMENDING SECTIONS 80-9-101 AND 80-9-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-9-101, MCA, is amended to read:

“80-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

- (1) “AOAC international” means the association of official analytical chemists.

(2) "Brand name" means any word, name, symbol, or device or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(3) (a) "Commercial feed" means all materials or combinations of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless the materials are specifically ~~exempted~~ *excluded* by law.

(b) ~~Unmixed~~ *The term does not include unmixed* whole seeds and physically altered entire unmixed seeds, when those seeds are not chemically changed or adulterated within the meaning of 80-9-204, ~~are exempt~~. The department may by rule ~~exempt~~ *exclude* from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

(4) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract ~~whereby~~ *under which* the commercial feed is supplied, furnished, or otherwise provided to that person and ~~whereby~~ *under which* that person's remuneration is determined completely or in part by feed consumption, mortality, profits, or amount or quality of product.

(5) "Customer formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients, each batch of which is manufactured according to *the* specific instructions of the final purchaser.

(6) "Distribute" means to offer for sale, sell, exchange, or barter commercial feed or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(7) "Distributor" means a person who distributes *commercial feed*.

(8) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than humans, and articles other than feed intended to affect the structure or function of the animal body.

(9) "Feed ingredient" means each of the constituent materials making up a commercial feed *or a noncommercial feed*.

(10) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.

(11) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed, any of its containers, its wrapper, or accompanying the commercial feed.

(12) "Manufacture" means to grind, mix, blend, or further process a commercial feed.

(13) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(14) (a) *Noncommercial feed* means all materials or combinations of materials that are used as feed or for mixing in feed and that are not intended for distribution, unless the materials are specifically excluded by law.

(b) *The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or*

adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

~~(14)~~ (15) "Official sample" means a sample of feed taken by the department in accordance with the provisions of 80-9-301.

~~(15)~~ (16) "Percent" or "percentage" means percentage by weights.

~~(16)~~ (17) "Person" means an individual, partnership, corporation, or association.

~~(17)~~ (18) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

~~(18)~~ (19) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

~~(19)~~ (20) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

~~(20)~~ (21) "Quantity statement" means the net weight or mass; net volume, either liquid or dry; or count.

~~(21)~~ (22) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

~~(22)~~ (23) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

~~(23)~~ (24) "Ton" means a net weight of 2,000 pounds avoirdupois."

Section 2. Section 80-9-301, MCA, is amended to read:

"80-9-301. Enforcement — inspection — notice — sampling and analysis. (1) To enforce this chapter, the department upon presenting appropriate credentials may enter, at reasonable times or under emergency conditions, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, distributed, or held or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling found in ~~them~~ a factory, warehouse, establishment, or vehicle. The inspection may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under 80-9-204(14).

(2) *The department may enter premises to inspect, sample, and analyze noncommercial feeds and ingredients. The department shall provide at least 2 hours' notice prior to the inspection and must be accompanied by the owner or the owner's representative. However, the department's authority is limited to determining whether the feeds and ingredients are adulterated for commercial feed purposes as provided in 80-9-204. The department may issue orders or condemn noncommercial feeds in the same manner as provided for commercial feeds in 80-9-302.*

~~(2)~~(3) Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle must be notified of the completion.

~~(3)~~(4) If the officer or employee making the inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give the owner, operator, or agent in charge a receipt describing the sample obtained.

~~(4)~~(5) To enforce this chapter the department may enter upon any public or private premises, including any vehicle of transport, during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

~~(5)~~(6) Sampling and analysis must be conducted in accordance with methods published by AOAC international or with other generally recognized methods.

~~(6)~~(7) The results of all analyses of official samples must be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the department shall upon request within 30 days following receipt of the analysis furnish the registrant a portion of the official sample.

~~(7)~~(8) The department, in determining for administrative purposes whether a commercial feed is deficient in any component, must be guided by the official sample as defined in 80-9-101 ~~(14)~~(15) and obtained and analyzed as provided for in subsections ~~(3)~~ (4) through ~~(5)~~ (6) of this section.

~~(8)~~(9) All official analyses must be performed cooperatively by the department and the agricultural experiment station at Montana state university-Bozeman. However, the department may arrange with other laboratories for specific analyses conducted as part of an official analysis."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 26, 2003

CHAPTER NO. 149

[HB 493]

AN ACT EXEMPTING FROM THE DEFINITION OF "PROFESSIONAL EMPLOYER ARRANGEMENT" HEALTH CARE FACILITIES THAT PROVIDE THEIR OWN EMPLOYEES TO PERFORM SERVICES AT AND ON BEHALF OF OTHER HEALTH CARE FACILITIES AND AT AND ON BEHALF OF PRIVATE OFFICES OF OTHER LICENSED HEALTH CARE WORKERS; EXEMPTING HEALTH CARE FACILITIES FROM THE DEFINITION OF "PROFESSIONAL EMPLOYER ORGANIZATION"; AND AMENDING SECTION 39-8-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-8-102, MCA, is amended to read:

"39-8-102. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under this chapter.

(2) "Client" means a person ~~who~~ *that* obtains all or part of its workforce from another person through a professional employer arrangement.

(3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.

(4) "Department" means the department of labor and industry.

(5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a professional employer organization hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.

(6) "Licensee" means a person licensed as a professional employer organization or group under this chapter.

(7) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.

(8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under which:

(i) a professional employer organization or group assigns employees to perform services for a client;

(ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

(iii) the employer responsibilities are shared by the professional employer organization or group and the client.

(b) The term does not include:

(i) services performed by a temporary service contractor;

(ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

(A) that person's principal business activity is not entering into professional employer arrangements; and

(B) that person does not represent to the public that the person is a professional employer organization or group; ~~and~~

(iii) arrangements ~~exist~~ *existing* for employment of an independent contractor, as defined in 39-71-120; and

(iv) *arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.*

(9) "Professional employer group" or "group" means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

(10) (a) "Professional employer organization" means:

~~(a)~~ (i) a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or

~~(b)(ii)~~ a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(b) The term does not include a health care facility, as defined in 50-5-101, that provides its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

(11) "Temporary service contractor" means a person conducting a business that hires its own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects."

Approved March 26, 2003

CHAPTER NO. 150

[HB 562]

AN ACT REVISING THE LAWS RELATING TO A CUSTOMER'S TELECOMMUNICATIONS CARRIER; PROVIDING THAT AN ELECTRONIC SIGNATURE MAY BE USED TO AUTHORIZE A CHANGE IN A CUSTOMER'S TELECOMMUNICATIONS CARRIER OR TO AUTHORIZE A CHARGE FOR A SERVICE OR PRODUCT TO BE BILLED ON A CUSTOMER'S BILL; ELIMINATING THE REQUIREMENT THAT A TELECOMMUNICATIONS CARRIER OBTAIN A CUSTOMER'S AUTHORIZATION TO PROVIDE SERVICES TO THE CUSTOMER AS A RESULT OF ACQUIRING THE SUBSCRIBER BASE OF ANOTHER CARRIER; AMENDING SECTIONS 69-3-1302 AND 69-3-1303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-1302, MCA, is amended to read:

"69-3-1302. Definitions. As used in this part, the following definitions apply:

~~(1) "Commission" means the public service commission provided for in 2-15-2602.~~

~~(2)~~(1) "Customer" means a person who has purchased telecommunications services from a telecommunications carrier.

(2) "*Electronic signature*" has the meaning as provided in 30-18-102.

(3) "Local exchange company" ~~means the same~~ has the meaning as provided in 53-19-302.

(4) "Primary interexchange carrier" means the telecommunications carrier from which a customer chooses to purchase long-distance services.

(5) (a) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services is considered a telecommunications carrier only to the extent that the person is engaged in providing telecommunications services.

(b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226."

Section 2. Section 69-3-1303, MCA, is amended to read:

“69-3-1303. Prohibition — exceptions. (1) A telecommunications carrier may not request a change in a customer’s primary interexchange carrier or local exchange company ~~except unless:~~

(a) ~~when the requesting carrier has obtained from the customer a document signed by the customer~~ *customer’s written or electronic signature on a form* that contains clear and conspicuous disclosure of the customer’s request for a change in telecommunications carrier;

(b) ~~when the customer affected by the change initiates the contact with the carrier in order to request the change; or~~

(c) ~~when the carrier who has initiated the change has obtained the customer’s verbal authorization as verified by an independent third party or by electronic means in accordance with rules prescribed by the commission; or~~

(d) the change in carrier is the result of a sale or transfer of a subscriber base from one carrier to another and the carrier that has acquired the subscriber base has notified the commission and customers affected by the change in accordance with rules prescribed by the commission.

(2) The documentation required in subsection (1):

(a) ~~must be signed by~~ *include the written or electronic signature of the* customer responsible for paying the charges on the account held by the telecommunications carrier; and

(b) may not be a part of any sweepstakes, contest, or similar promotional program.

(3) A telecommunications carrier or other entity may not initiate charges to be placed on a customer’s telecommunications bill unless the service or product has been requested by and provided to the customer. A customer request must be made in the following manner:

(a) by written authorization, in which the telecommunications provider or other entity has obtained ~~a document signed by the customer~~ *customer’s written or electronic signature on a form* containing a clear and conspicuous disclosure of the customer’s authorization or order of the product or service; or

(b) by verbal authorization, in which the telecommunications carrier or other entity has obtained the customer’s verbal authorization as verified by an independent third party or by electronic means in accordance with commission rules.

(4) The documentation provided for in ~~subsections (3)(a) and (3)(b)~~ *subsection (3)*:

(a) ~~must be signed by~~ *include the written or electronic signature of the* customer responsible for paying the charges on the telecommunications bill; and

(b) may not be a part of a sweepstakes, contest, or similar promotional program.

(5) A customer is not liable for any charges submitted for billing on the local exchange company’s telephone bill by another carrier or entity for products or services that the customer did not authorize or that were not provided to the customer.

(6) The provisions of subsections (3), (4), and (5) do not apply to a transaction between a customer and that customer's selected providers of local exchange or interexchange service."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 26, 2003

CHAPTER NO. 151

[SB 16]

AN ACT REVISING THE LAWS RELATED TO SCHOOL BOUNDARY TRANSFERS; ESTABLISHING CRITERIA, A STANDARD OF PROOF, AND PROCEDURES FOR TERRITORY TRANSFER HEARINGS; AUTHORIZING AN APPEAL OF THE COUNTY SUPERINTENDENT'S DECISION TO THE DISTRICT COURT; AMENDING SECTIONS 20-3-205, 20-6-214, 20-6-215, 20-6-308, AND 20-6-322, MCA; REPEALING SECTIONS 20-6-213, 20-6-309, AND 20-6-320, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Transfer of territory from one district to another — hearing on effects of proposed transfer — burden of proof — standard of proof — appeal to district court. (1) Except as provided in 20-6-214, 20-6-215, 20-6-308, and 20-6-322, a petition to transfer territory from one school district to another may be presented to the county superintendent if:

(a) the petition is signed by 60% of the registered electors qualified to vote at general elections in the territory proposed for transfer;

(b) the territory to be transferred is contiguous to the district to which it is to be attached, includes taxable property, and has school-age children living in it;

(c) the territory to be transferred is not located within 3 miles, over the shortest practicable route, of an operating school in the district from which it is to be transferred; and

(d) the board of trustees of the school district that would receive the territory has approved the proposed transfer by a resolution adopted by a majority of the members of the board of trustees at a meeting for which proper notice was given.

(2) On or after [the effective date of this act], once a petition to transfer territory has been filed, an additional petition to transfer that territory may not be filed for 4 years.

(3) The petition for a transfer of territory must be delivered to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the district to which the territory is to be transferred;

(b) state the reasons why the transfer is requested; and

(c) state the number of school-age children residing in the territory.

(4) If both the trustees of the receiving and transferring school districts have approved the proposed territory transfer in writing, the county superintendent shall grant the transfer.

(5) For any petition that meets the criteria specified in subsection (1) and contains the information required by subsection (3) but that has not been approved in writing by the board of trustees of the school district that would transfer the territory, the county superintendent shall:

(a) not more than 40 days after receipt of the petition, set a place, date, and time for a hearing to consider the petition; and

(b) give notice of the place, date, and time of the hearing. The notice must be posted in the districts affected by the petition for the transfer of territory in the manner prescribed in this title for notices for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.

(6) The county superintendent shall conduct a hearing as scheduled, and any resident, taxpayer, or representative of the receiving or transferring district must, upon request, be heard. At the hearing, the petitioners have the initial burden of presenting evidence on the proposed transfer's effect on:

(a) the educational opportunity for the students in the receiving and transferring districts, including but not limited to:

(i) class size;

(ii) ability to maintain demographic diversity;

(iii) local control;

(iv) parental involvement; and

(v) the capability of the receiving district to provide educational services;

(b) student transportation, including but not limited to:

(i) safety;

(ii) cost; and

(iii) travel time of students;

(c) the economic viability of the proposed new districts, including but not limited to:

(i) the existence of a significant burden on the taxpayers of the district from which the territory will be transferred;

(ii) the significance of any loss in state funding for the students in both the receiving and transferring districts;

(iii) the viability of the future bonding capacity of the receiving and transferring districts, including but not limited to the ability of the receiving district and the transferring district to meet minimum bonding requirements;

(iv) the ability of the receiving district and the transferring district to maintain sufficient reserves; and

(v) the cumulative effect of other transfers of territory out of the district in the previous 8 years on the taxable value of the district from which the territory is to be transferred. In cases where the cumulative effect of other transfers of territory out of the district in the previous 8 years is equal to or greater than 25% of the district's taxable value, the following additional factors must be considered and weighed in the decision:

(A) the district's rate of passage of discretionary levies placed before the voters over the previous 8 years;

(B) the district's reduction or elimination of instructional staff or programs over the previous 8 years; and

(C) any increase in district taxes over the previous 8 years and the likely increase in district taxes if the transfer is granted.

(7) After receiving evidence from both the proponents and opponents of the proposed territory transfer on the effects described in subsection (6), the county superintendent shall, within 30 days after the hearing, issue findings of fact, conclusions of law, and an order.

(8) If, based on a preponderance of the evidence, the county superintendent determines that the evidence on the effects described in subsection (6) supports a conclusion that a transfer of the territory is in the best and collective interest of students in the receiving and transferring districts and does not negatively impact the ability of the districts to serve those students, the county superintendent shall grant the transfer. If the county superintendent determines that, based on a preponderance of the evidence presented at the hearing, a transfer of the territory is not in the best and collective interest of students in the receiving and transferring districts and will negatively impact the ability of the districts to serve those students, the county superintendent shall deny the territory transfer.

(9) The decision of the county superintendent is final 30 days after the date of the decision unless it is appealed to the district court by a resident, taxpayer, or representative of either district affected by the petitioned territory transfer. The county superintendent's decision must be upheld unless the court finds that the county superintendent's decision constituted an abuse of discretion under this section.

(10) Whenever a petition to transfer territory from one district to another district creates a joint district or affects the boundary of an existing joint district, the petition to transfer territory must be delivered to the county superintendent of the county in which the territory proposed to be transferred is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly. If the number of county superintendents involved is an even number, the county superintendents shall jointly appoint an additional county superintendent from an unaffected county to join them in conducting the hearing required in subsection (6) and in issuing the decision required in subsection (8). The decision issued under subsection (8) must be made by a majority of the county superintendents.

(11) A petition seeking to transfer territory out of or into a K-12 district must propose the transfer of territory for both elementary and high school purposes. In the case of a proposed transfer out of or into a K-12 district, a petition that fails to propose the transfer of territory for both elementary and high school purposes is invalid for the purposes of this section.

Section 2. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile of the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(17) compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed."

Section 3. Section 20-6-214, MCA, is amended to read:

"20-6-214. Boundary adjustments in elementary school districts. The trustees of an elementary school district may, by resolution, request a change in the boundaries between their district and an adjacent district. *If the trustees request a transfer by resolution, the territory proposed for transfer must conform to the provisions of [section 1(1) and (2)] and the resolution must include information outlined in [section 1(3)].* The resolution ~~shall~~ must be addressed to the county superintendent of schools who, upon receiving ~~such a~~ the resolution, shall proceed to a hearing as set forth in ~~20-6-213~~ [section 1(6)]."

Section 4. Section 20-6-215, MCA, is amended to read:

"20-6-215. Review of boundaries by county superintendent. A county superintendent of schools shall, at least once every 3 years, review the existing elementary school district boundaries in the county. ~~This~~ The review and any recommended boundary changes *must include information that the territory proposed for transfer complies with the provisions of [section 1(1) through (3)] and shall* be presented by the superintendent at a hearing conducted under ~~20-6-213~~ [section 1(6)]. If the superintendent orders a boundary change after the hearing, ~~he~~ the superintendent shall forward copies of ~~his~~ the review

and the testimony at the hearing to the board of county commissioners and the state superintendent of public instruction.”

Section 5. Section 20-6-308, MCA, is amended to read:

“20-6-308. Limitations for organization Organization of joint high school district. The boundaries of ~~any~~ a high school district ~~which that~~ encompass a county’s portion of a joint elementary district where an elementary school is operated may be changed to establish a joint high school district. ~~Such~~ *The high school district boundary change shall must* be a transfer of all the territory located in another county’s portion of the same joint elementary district *and must be made pursuant to the procedures provided in [section 1].* ~~No such boundary change shall be made when:~~

~~(1) the territory transfer would reduce the taxable value of the taxable property of another high school district to less than \$1 million; or~~

~~(2) a portion of the territory to be transferred is less than 3 miles from an operating accredited high school located in another high school district.”~~

Section 6. Section 20-6-322, MCA, is amended to read:

“20-6-322. Boundary adjustments in high school districts. The trustees of a high school district may, by resolution, request a change in the boundaries between their district and an adjacent district. *If the trustees request a transfer by resolution, the territory proposed for transfer must conform to the provisions of [section 1(1) and (2)] and the resolution must include information outlined in [section 1(3)].* The resolution must be addressed to the county superintendent of schools who, upon receiving a *the* resolution, shall proceed to a hearing as provided in ~~20-6-320~~ *[section 1(6)].*”

Section 7. Repealer. Sections 20-6-213, 20-6-309, and 20-6-320, MCA, are repealed.

Section 8. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 6, part 1, and the provisions of Title 20, chapter 6, part 1, apply to [section 1].

Section 9. Effective date — applicability. [This act] is effective on passage and approval and applies to school territory transfer proceedings beginning on or after [the effective date of this act].

Ap proved March 27, 2003

CHAPTER NO. 152

[SB 19]

AN ACT GENERALLY REVISING LAWS RELATING TO STATE ASSUMPTION OF DISTRICT COURT COSTS; CLARIFYING JURORS’ AND WITNESSES’ WARRANT PAYMENT PROCESSES; REVISING THE APPOINTING AUTHORITY FOR COURT REPORTERS, JUVENILE PROBATION OFFICERS, AND YOUTH ASSESSMENT OFFICERS; CLARIFYING WORKERS’ COMPENSATION REQUIREMENTS FOR INDEPENDENT CONTRACTOR COURT REPORTERS; ELIMINATING STATUTORY PROVISIONS RELATING TO JOB QUALIFICATIONS FOR JUVENILE PROBATION OFFICERS; AMENDING SECTIONS 3-5-510, 3-5-511, 3-5-601, 3-5-902, 3-15-204, 41-5-1701, 41-5-1703, 41-5-1706, AND

41-5-1707, MCA; REPEALING SECTION 41-5-1702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-510, MCA, is amended to read:

“3-5-510. Duties relating to jurors and witnesses. The clerk of the district court shall:

(1) keep a book called “Book of Jurors’ Warrants”, which must contain ~~the~~ blank warrants ~~and copies~~ as provided in 3-15-204;

(2) keep a “Witness Book”, which must contain blank warrants ~~and copies~~ as provided in 3-5-511;

(3) keep a record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage. ~~(the~~ *The* distance from any point to the county seat must be determined by the shortest traveled route).”

Section 2. Section 3-5-511, MCA, is amended to read:

“3-5-511. Procedure in reference to witnesses’ warrants. (1) The witnesses in criminal actions shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a *county* warrant ~~taken from a book containing a carbon copy of the warrant~~, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due.

(3) ~~The state shall reimburse the clerk for the amount specified in the warrant must be paid by the state~~ as provided in 3-5-901 and 3-5-902.”

Section 3. Section 3-5-601, MCA, is amended to read:

“3-5-601. Court reporters — appointment — oath — employment status. (1) The judge of a district court may appoint a reporter for the court who is an officer of the court ~~and holds office at the pleasure of the appointing judge~~. The court reporter shall take the constitutional oath of office and file it with the clerk of court. In districts where there are two or more judges, each judge may appoint a reporter. The judge shall direct the performance of the court reporter’s duties.

(2) Court reporter services may be provided by a court reporter appointed:

- (a) as a state employee foregoing transcription fees;
- (b) as a state employee retaining transcription fees; or
- (c) as an independent contractor.

(3) A court reporter appointed under subsection (2)(a) or (2)(b) is subject to classification and compensation as determined by the judicial branch personnel plan adopted under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18.

(4) (a) If a court reporter is appointed under subsection (2)(a), the state shall provide all equipment and supplies for the reporter’s use. Any transcription fees paid for the reporter’s transcription services must be forwarded to the department of revenue for deposit in the state general fund.

(b) If a court reporter is appointed under subsection (2)(b), the state shall provide equipment and supplies for the reporter’s use, except that the reporter

shall provide and maintain all equipment and supplies for performance of transcription duties unless equipment is shared as provided in subsection (5). A reporter may not receive overtime for time spent on preparation of transcripts for which the reporter retains fees. The reporter shall retain all transcription fees paid for the reporter's transcription services.

(c) A court reporter appointed under subsection (2)(c) shall contract with the judicial branch as an independent contractor. The reporter shall provide and maintain the reporter's necessary equipment and supplies, retain all transcription fees paid for the reporter's transcript preparation services, and maintain professional liability insurance and workers' compensation coverage *unless an exemption from workers' compensation coverage has been obtained pursuant to 39-71-401.*

(5) A court reporter may use state-owned equipment under policies adopted by the district court council under 3-1-1602 to avoid duplication of equipment costs. Use of shared equipment under this subsection is not a violation of 2-2-121(2)(a)."

Section 4. Section 3-5-902, MCA, is amended to read:

"3-5-902. Fiscal administration for payment of court expenses. The supreme court administrator shall establish procedures for disbursement of funds for payment of district court expenses listed in 3-5-901 *and other statutorily assumed or reimbursable district court costs and expenses* and record payments at a detailed level for budgeting and auditing purposes."

Section 5. Section 3-15-204, MCA, is amended to read:

"3-15-204. (Temporary) Duties of clerk as to jurors. (1) The clerk shall keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk shall give to each juror, at the time that the juror is excused from further service, a *county* warrant signed by the clerk, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) The *state shall reimburse the clerk for the* amount specified in the warrant ~~must be paid by the state~~ as provided in 3-5-901 and 3-5-902.

3-15-204. (Effective on occurrence of contingency) Duties of clerk as to jurors. (1) The clerk shall keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk shall give to each juror, at the time that the juror is excused from further service, a *county* warrant signed by the clerk, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) The *state shall reimburse the clerk for the* amount specified in the warrant ~~must be paid by the state~~ as provided in 3-5-901 and 3-5-902.

(4) The clerk of court for the county in which an asbestos-related claim is tried shall perform the functions required in subsections (1) through (3). The payment of costs incurred under this section must be made from the asbestos claims administration fund provided for in 3-20-104."

Section 6. Section 41-5-1701, MCA, is amended to read:

“41-5-1701. Appointment Employment of juvenile probation officers and youth court staff. ~~(1) The youth court judge of each judicial district shall appoint probation officers, deputy probation officers, and part time probation officers necessary to administer this chapter. The qualifications for part time probation officers must approximate those required for probation officers insofar as possible. A chief probation officer must be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also ensure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter. A person while serving as a law enforcement officer may not be appointed or perform the duties of a full time or part time probation officer.~~

~~(2) All probation officers and youth division office court staff hired or appointed under subsection (1) are employees of the judicial branch of state government. The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18.”~~

Section 7. Section 41-5-1703, MCA, is amended to read:

“41-5-1703. Powers and duties of probation officers. (1) A probation officer shall:

- (a) perform the duties set out in 41-5-1302;
 - (b) make predisposition studies and submit reports and recommendations to the court;
 - (c) supervise, assist, and counsel youth placed on probation or under the probation officer's supervision, including enforcement of the terms of probation or intervention;
 - (d) assist any public and private community and work projects engaged in by youth to pay fines, make restitution, and pay any other costs ordered by the court that are associated with youth delinquency or need for intervention;
 - (e) perform any other functions designated by the court.
- (2) A probation officer does not have power to make arrests or to perform any other law enforcement functions in carrying out the probation officer's duties except that a probation officer may take into custody any youth who violates either the youth's probation or a lawful order of the court.
- (3) *The duties of a full-time or part-time probation officer may not be performed by a person serving as a law enforcement officer.”*

Section 8. Section 41-5-1706, MCA, is amended to read:

“41-5-1706. Juvenile probation officer training. (1) The department of justice may conduct a 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers. A 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers may be offered by another public agency or by a private entity if the program or course is approved by the board of crime control. If funding is available, the department shall conduct a 40-hour basic training program once a year.

(2) A juvenile probation officer who successfully completes the 40-hour basic training program or another program or course must be issued a certificate by the board.

~~(3) A juvenile probation officer is entitled to the officer's salary and expenses, as provided in 2-18-501 through 2-18-503, while attending a program or training course. The court shall also pay any program or course registration fee.~~

(3) Each chief probation officer and deputy probation officer shall obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers in a program or course conducted by the department of justice or approved by the board of crime control.

(4) The board may adopt rules to implement this section."

Section 9. Section 41-5-1707, MCA, is amended to read:

~~**"41-5-1707. Designation of assessment officers — duties — access to records.** (1) The youth court judge of each judicial district may appoint and supervise assessment officers necessary to administer this chapter. Assessment officers appointed under this section are employees of the judicial branch of state government. The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18.~~

~~(2)(1)~~ (1) An assessment officer employed by the state judicial branch shall perform the duties set out in 41-5-1201 and 41-5-1302.

~~(3)(2)~~ (2) Proceedings under 41-5-1201 and 41-5-1302 that are held prior to adjudication satisfy the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to assessment officers. The assessment officer is responsible for ensuring that officials and authorities to whom that information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent of the student."

Section 10. Repealer. Section 41-5-1702, MCA, is repealed.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved March 26, 2003

CHAPTER NO. 153

[SB 20]

AN ACT EXEMPTING COURT REPORTERS APPOINTED AS INDEPENDENT CONTRACTORS FROM THE MONTANA PROCUREMENT ACT; AMENDING SECTION 18-4-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by

this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; ~~or~~

(h) a claims adjuster; *or*

(i) *a court reporter appointed as an independent contractor under 3-5-601.*

(7) (a) This chapter does not apply to electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 26, 2003

CHAPTER NO. 154

[SB 68]

AN ACT PROVIDING THAT A CIRCUMSTANCE OR FACT USED TO ENHANCE A PENALTY OR AN AGGRAVATING CIRCUMSTANCE USED TO IMPOSE A DEATH PENALTY MUST BE PLEADED AND ADMITTED OR MUST BE FOUND BY THE TRIER OF FACT BEYOND A REASONABLE DOUBT; AND AMENDING SECTIONS 46-1-401, 46-18-302, 46-18-305, AND 46-18-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-1-401, MCA, is amended to read:

“46-1-401. Incarceration penalty Penalty enhancement — pleading, proof, and mental state requirements. (1) A court may not impose ~~an incarceration~~ a penalty enhancement specified in Title 45, Title 46, or any other provision of law unless:

(a) the enhancing act, omission, or fact was charged in the information, complaint, or indictment, with a reference to the statute or statutes containing the enhancing act, omission, or fact and the penalty for the enhancing act, omission, or fact;

(b) if the case was tried before a jury, the jury unanimously found in a separate finding that the enhancing act, omission, or fact occurred beyond a reasonable doubt; ~~and~~

(c) if the case was tried to the court without a jury, the court finds beyond a reasonable doubt that the enhancing act, omission, or fact occurred; *and*

(d) *a defendant who knowingly and voluntarily pleaded guilty to an offense also admitted to the enhancing act, omission, or fact.*

(2) The enhancement issue may be submitted to a jury on a form separate from the verdict form or may be separately stated on the verdict form. The jury must be instructed that it is to reach a verdict on the offense charged in the information, complaint, or indictment before the jury can consider whether the enhancing act, omission, or fact occurred.

(3) An enhancing act, omission, or fact is an act, omission, or fact, whether stated in the statute defining the charged offense or stated in another statute, that is not included in the statutory definition of the elements of the charged offense and that allows or requires a sentencing court to add to, as provided by statute, ~~an incarceration period~~ a penalty provided by statute for the charged offense or to impose the death penalty instead of a statutory incarceration period provided by statute for the charged offense. *Except as provided in subsection (4), the aggravating circumstances contained in 46-18-303 are enhancing acts, omissions, or facts.*

~~(4)~~(4) Use of the fact of one or more prior convictions for the same type of offense or for one or more other types of offenses to enhance the ~~incarceration~~ penalty for a charged offense is ~~not~~ not subject to the requirements of this section.”

Section 2. Section 46-18-302, MCA, is amended to read:

“46-18-302. Evidence that may be received. ~~In~~ (1) (a) Subject to subsection (1)(b), in the sentencing hearing, evidence may be presented as to any matter the court considers relevant to the sentence, including but not limited to:

- (i) the nature and circumstances of the crime;
- (ii) the defendant's character, background, history, and mental and physical condition;
- (iii) the harm caused to the victim and the victim's family as a result of the offense; and
- (iv) any other facts in aggravation or mitigation of the penalty.

(b) *Evidence of an aggravating circumstance may not be admitted or considered unless the defendant pleaded guilty to the offense and admitted the aggravating circumstance or the trier of fact found beyond a reasonable doubt that the aggravating circumstance existed.*

(2) Any evidence that the court considers to have probative force may be received regardless of its admissibility under the rules governing admission of evidence at criminal trials. Evidence admitted at the trial relating to aggravating or mitigating circumstances must be considered without reintroducing it at the sentencing proceeding. The state and the defendant or the defendant's counsel must be permitted to present argument for or against sentence of death."

Section 3. Section 46-18-305, MCA, is amended to read:

"46-18-305. Effect of aggravating and mitigating circumstances. In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if ~~it finds one or more of the aggravating circumstances~~ *the trier of fact found beyond a reasonable doubt, or the defendant pleaded guilty to the offense and admitted to, one or more aggravating circumstances* and ~~the court finds that~~ there are no mitigating circumstances sufficiently substantial to call for leniency. If the court does not impose a sentence of death and one of the aggravating circumstances listed in 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense."

Section 4. Section 46-18-310, MCA, is amended to read:

"46-18-310. Supreme court's determination as to the sentence. (1) The supreme court shall consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall determine:

- (a) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;
- (b) whether the evidence supports the *trier of fact's finding of the existence or nonexistence of the aggravating circumstances enumerated in 46-18-303 and the sentencing judge's finding of the existence or nonexistence of the aggravating or mitigating circumstances enumerated in 46-18-303 and 46-18-304*; and
- (c) whether the sentence of death is excessive or disproportionate to the penalty imposed in other cases in which a sentencing hearing was held pursuant to 46-18-301, whether the sentence imposed was death or a sentence other than death, considering both the crime and the defendant. The court shall include in its decision a reference to those other cases it took into consideration.

(2) The supreme court shall uphold the sentencing court's findings of fact issued pursuant to 46-18-306 unless those findings are clearly erroneous. The

supreme court may not substitute its judgment for that of the sentencing court in:

- (a) assessing the credibility of witnesses;
- (b) drawing inferences from testimonial, physical, documentary, or other evidence; or
- (c) resolving conflicts in the evidence presented at the sentencing hearing or considered by the sentencing court.”

Approved March 26, 2003

CHAPTER NO. 155

[SB 71]

AN ACT REVISING THE DEFINITION OF “LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICE” WITH RESPECT TO ELIGIBILITY FOR AN INCOME TAX CREDIT; REMOVING THE DEPARTMENT OF ENVIRONMENTAL QUALITY’S RULEMAKING AUTHORITY FOR ESTABLISHING EMISSION TESTING AND EMISSION CERTIFICATION STANDARDS FOR LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; AMENDING SECTIONS 15-32-102 AND 15-32-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-102, MCA, is amended to read:

“15-32-102. Definitions. As used in this part, the following definitions apply:

(1) “Alternative energy system” means the generation system or equipment used to convert energy sources into usable sources using fuel cells that do not require hydrocarbon fuel, geothermal systems, low emission wood or biomass, wind, photovoltaics, geothermal, small hydropower plants under 1 megawatt, and other recognized nonfossil forms of energy generation.

(2) “Building” means:

(a) a single or multiple dwelling, including a mobile home or manufactured home; or

(b) a building used for commercial, industrial, or agricultural purposes that is enclosed with walls and a roof.

(3) “Capital investment” means any material or equipment purchased and installed in a building or land with or without improvements.

(4) “Energy conservation purpose” means one or both of the following results of an investment:

(a) reducing the waste or dissipation of energy; or

(b) reducing the amount of energy required to accomplish a given quantity of work.

(5) “Geothermal system” means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

(6) "Low emission wood or biomass combustion device" means a ~~noncatalytic stove or furnace that~~ wood-burning appliance:

(a) ~~(i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and~~

~~(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203; or~~

~~(iii) has an air to fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air to fuel ratio and minimum achievable burn rates for wood fired appliances, as adopted by the department of environmental quality pursuant to 15-32-203; or~~

~~(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203.~~

~~(a) certified by the U.S. environmental protection agency pursuant to 40 CFR 60.533; or~~

~~(b) that uses wood pellets as its primary source of fuel.~~

(7) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(8) "Recognized nonfossil forms of energy generation" means:

(a) a system that captures energy or converts energy sources into usable sources, including electricity, by using:

(i) solar energy, including passive solar systems;

(ii) wind;

(iii) solid waste;

(iv) the decomposition of organic wastes;

(v) geothermal;

(vi) fuel cells that do not require hydrocarbon fuel; or

(vii) an alternative energy system;

(b) a system that produces electric power from biomass or solid wood wastes;
or

(c) a small system that uses water power by means of an impoundment that is not over 20 acres in surface area."

Section 2. Section 15-32-203, MCA, is amended to read:

"15-32-203. Department to make rules. (1) The department of revenue shall prescribe rules necessary to carry out the purposes of this part.

~~(2) The department of environmental quality shall adopt rules establishing emission testing and emission certification standards for low emission wood or~~

~~biomass combustion devices and shall maintain a list of the devices that are certified."~~

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001.

Approved March 26, 2003

CHAPTER NO. 156

[SB 144]

AN ACT GENERALLY REVISING STATE SECURITIES LAWS; MODIFYING THE INDIVIDUALS NOT INCLUDED IN THE DEFINITION OF "SALESPERSON"; PROVIDING FOR A CHARGE OF 50 CENTS FOR EACH PAGE FOR OBTAINING CERTAIN COPIES FROM THE SECURITIES COMMISSIONER; PROVIDING A \$50 FEE FOR AN ISSUER FILING A NAME CHANGE FOR A SERIES, PORTFOLIO, OR OTHER SUBDIVISION OF AN INVESTMENT COMPANY OR SIMILAR ISSUER; REQUIRING THE FILING OF CERTAIN DOCUMENTS WITH RESPECT TO FEDERAL COVERED SECURITIES; AND AMENDING SECTIONS 30-10-103, 30-10-107, 30-10-209, AND 30-10-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gemstone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

- (iv) foreign currency; and
- (v) all other goods, articles, products, or items of any kind.
- (b) Commodity does not include:
 - (i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;
 - (ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or
 - (iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.
- (4) "Commodity Exchange Act" means the federal statute of that name.
- (5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.
- (6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.
 - (b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.
- (7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.
 - (b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.
- (8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.
 - (b) The term does not include a person who would be exempt from the definition of investment adviser pursuant to subsection (11)(c)(i), (11)(c)(ii), (11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix).

(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (12)(a) is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(16) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(17) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

(18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of

securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition. Salesperson does not include an individual who represents:

- (a) an issuer in:
 - (i) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);
 - (ii) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;
 - (iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 ~~for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933~~ *if a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer*; or
 - (iv) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or
- (b) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(23) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

Section 2. Section 30-10-107, MCA, is amended to read:

"30-10-107. Administration. (1) The administration of the provisions of parts 1 through 3 of this chapter must be under the general supervision and control of the state auditor, the ex officio securities commissioner. The commissioner may, from time to time, make, amend, and rescind rules and forms as necessary to carry out the provisions of parts 1 through 3 of this

chapter. A rule or form may not be adopted unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms, the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, and reports whenever practicable.

(2) It is unlawful for the commissioner or any of the commissioner's officers or employees to use for personal benefit any information filed with or obtained by the commissioner and not made public. The provisions of parts 1 through 3 of this chapter do not authorize the commissioner or any of the commissioner's officers or employees to disclose any information or the fact that an investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) The provisions of parts 1 through 3 of this chapter imposing liability do not apply to an act done or omitted in good faith in conformity with a rule, form, or order of the commissioner, ~~notwithstanding that~~ *even though* the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding must be public.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements that are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders that have ever been entered under parts 1 through 3 of this chapter. The register must be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under rules the commissioner prescribes.

(6) Upon request and at a ~~reasonable~~ charge of *50 cents for each page*, the commissioner shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document that is a matter of public record. In a proceeding or prosecution under parts 1 through 3 of this chapter, a certified copy is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, the securities registration depository, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body.

(8) Except as specifically provided in this title, an order or notice may be given to a person by personal delivery or by mail addressed to that person at the person's last-recorded principal place of business on file at the commissioner's office. An order or notice that is mailed is considered to have been given at the time it is mailed."

Section 3. Section 30-10-209, MCA, is amended to read:

“30-10-209. Fees. The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, or for notice filing of a federal covered security, there must be paid to the commissioner for the initial year of registration or notice filing a fee of \$200 for the first \$100,000 of initial issue or portion of the first \$100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000, with a maximum fee of \$1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of a renewal fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year. The renewal fee may not be less than \$200 or more than \$1,000. The registration or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant or issuer of federal covered securities sells securities in excess of the aggregate amount registered for sale in this state, or for which a notice filing has been submitted, the registrant or issuer may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the registrant or issuer shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a portfolio notice filing fee to be calculated as provided in subsections (1)(a) through (1)(c). The portfolio notice filing fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115. *The issuer shall pay a fee of \$50 for each filing made for the purpose of changing the name of a series, portfolio, or other subdivision of an investment company or similar issuer.*

(2) (a) For registration of a broker-dealer or investment adviser, the fee is \$200 for original registration and \$200 for each annual renewal.

(b) For registration of a salesperson or investment adviser representative, the fee is \$50 for original registration with each employer, \$50 for each annual renewal, and \$50 for each transfer. A salesperson who is ~~dually~~ registered as an investment adviser representative with a broker-dealer ~~dually~~ registered as an investment adviser is not required to pay the \$50 fee to register as an investment adviser representative.

(c) For a federal covered adviser, the fee is \$200 for the initial notice filing and \$200 for each annual renewal.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is \$50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 may be refunded.

(6) Except for portfolio notice filing fees established in this section, all fees, examination charges, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund.”

Section 4. Section 30-10-211, MCA, is amended to read:

“30-10-211. Federal covered securities. (1) ~~The commissioner may require an~~ An issuer *is required* to file ~~any or all of~~ the following documents with respect to a federal covered security provided for in section 18(b)(2) of the Securities Act of 1933:

(a) documents that are part of a current federal registration statement filed with the securities and exchange commission or amendments to a current registration statement filed with the securities and exchange commission;

(b) a consent to the service of process signed by the issuer and payment of the fee required in 30-10-209; and

(c) annual or periodic reports of the value of the federal covered securities offered or sold in this state.

(2) ~~The commissioner may require the~~ The issuer of a federal covered security under 18(b)(4)(D) of the Securities Act of 1933 *is required* to file within 15 days after the first sale in this state a notice on a form prescribed by the commissioner and a consent to service of process and ~~may require the issuer is required~~ to pay the notice filing fee prescribed in 30-10-209.

(3) The commissioner may require the filing of any document filed with the securities and exchange commission under the Securities Act of 1933, with respect to a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933, and may require payment of the notice filing fee prescribed in 30-10-209.

(4) The commissioner may issue a cease and desist order suspending the offer and sale of a federal covered security if the commissioner finds that the order is in the public interest and there is a failure to comply with any requirement of this section.

(5) The commissioner may waive any of the provisions of this section.”

Approved March 26, 2003

CHAPTER NO. 157

[HB 156]

AN ACT REVISING THE ABILITY TO PLACE A YOUTH ADJUDICATED DELINQUENT FOR AN ACT THAT WOULD BE A MISDEMEANOR IF COMMITTED BY AN ADULT IN A STATE YOUTH CORRECTIONAL FACILITY; AND AMENDING SECTION 41-5-1513, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-1513, MCA, is amended to read:

“41-5-1513. Disposition — delinquent youth — restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. ~~The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult unless the court finds that the youth presents a danger to the public safety and that the placement is recommended by a mental health professional after evaluation of the youth.~~ The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). ~~The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:~~

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex offender treatment before a youth is discharged.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel.”

Approved March 28, 2003

CHAPTER NO. 158

[HB 176]

AN ACT PROVIDING FOR THE FUNDING OF ADMINISTRATIVE EXPENSES ASSOCIATED WITH REGIONAL DRINKING WATER SYSTEMS UNDER THE TREASURE STATE ENDOWMENT PROGRAM; MODIFYING THE RESPONSIBILITY FOR ADMINISTRATION OF THE FUNDS; AMENDING SECTION 90-6-715, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-715, MCA, is amended to read:

“90-6-715. (Temporary) Special revenue account — use. (1) The treasure state endowment regional water system special revenue account may be used to provide matching funds to plan and construct regional drinking water systems in Montana *and to provide funding of administrative expenses for state and local entities associated with regional drinking water systems.* ~~Each~~ *Except for the administrative expenses provided for in this subsection, each* state dollar must be matched equally by local funds. Federal and state grants may not be used as a local match.

(2) Up to 25% of the local matching funds required under subsection (1) for the treasure state endowment regional water system may be in the form of debt that was incurred by local government entities included in the regional water system to construct individual drinking water systems before the individual systems were connected to the regional system. However, the amount of an individual entity's debt that may be used for matching funds is limited to the amount necessary to allow the entity to maintain its water service charges below the hardship standard established by the department through administrative rules adopted under 90-6-710(4).

(3) The funds in the account are further restricted to be used to finance regional drinking water systems that supply water to large geographical areas and serve multiple local governments, such as projects in north central Montana, from the waters of the Tiber reservoir, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of Havre, north of Dutton, and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.

(4) The funds must be administered by the department of ~~commerce~~ *natural resources and conservation* for eligible projects. (Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)”

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved March 28, 2003

CHAPTER NO. 159

[HB 391]

AN ACT CORRECTING INDIVIDUAL AND CORPORATE TAX LAW THAT RELATES TO FEDERAL TAX LAW, INCLUDING THE TAX ON LUMP-SUM DISTRIBUTIONS, THE COMMERCIAL OR NET METERING SYSTEM INVESTMENT CREDIT, AND THE SMALL BUSINESS INVESTMENT TAX CREDIT; AMENDING SECTIONS 15-30-106, 15-32-402, AND 15-32-405, MCA; REPEALING SECTIONS 15-30-161, 15-30-162, AND 15-31-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-106, MCA, is amended to read:

“15-30-106. Tax on lump-sum distributions. (1) ~~There is~~ *A separate tax* is imposed ~~a separate tax~~ on *that portion of a lump-sum distributions* distribution for which a deduction was allowed by section 62(a)(8) of the Internal Revenue Code (now repealed).

(2) The tax is 10% of the amount of tax determined under section ~~402(e)~~ 402(d) of the Internal Revenue Code ~~of 1954, as amended, or as section 402(e)~~ *may be renumbered or amended that was in effect and applicable to a distribution before amendment by section 1401 of Public Law 104-188.*

(3) All means available for the administration and enforcement of income taxes ~~shall~~ *must* be applied to the tax on lump-sum distributions.”

Section 2. Section 15-32-402, MCA, is amended to read:

“15-32-402. Commercial or net metering system investment credit — alternative energy systems. (1) An individual, corporation, partnership, or small business corporation as defined in 15-30-1101 that makes an investment of \$5,000 or more in certain depreciable property qualifying under section ~~38~~ 48(a) of the Internal Revenue Code of ~~1954~~ 1986, as amended, for a commercial system or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative renewable energy source, as defined in 90-4-102, is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce alternative energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the alternative energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify *as energy property* under section ~~38~~ 48(a)(3) of the Internal Revenue Code of ~~1954~~ 1986, as amended, and that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

- (b) safety devices and storage components;
 - (c) transmission lines necessary to connect with existing transmission facilities; and
 - (d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.
- (3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system.”

Section 3. Section 15-32-405, MCA, is amended to read:

“15-32-405. Exclusion from other tax incentives. If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax credit, including but not limited to the tax credits allowed by ~~15-30-162 and 15-31-123 through 15-31-124~~ and 15-31-125, may be claimed for the investment. Property tax reduction allowed by 15-6-201~~(3)~~(4) may not be applied to a facility for which a credit is claimed pursuant to this part.”

Section 4. Repealer. Sections 15-30-161, 15-30-162, and 15-31-123, MCA, are repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. (1) [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1999.

(2) [Section 2] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001.

Approved March 28, 2003

CHAPTER NO. 160

[HB 429]

AN ACT ESTABLISHING A PROPERTY TAX EXEMPTION STUDY COMMITTEE; PROVIDING AN APPROPRIATION TO THE COMMITTEE; AND PROVIDING EFFECTIVE DATES.

WHEREAS, property has been and continues to be taken off the property tax rolls under the property tax exemption laws; and

WHEREAS, local governments and school districts experience financial constraints because of property tax exemptions; and

WHEREAS, other property taxpayers bear a larger tax burden because of property tax exemptions; and

WHEREAS, it is the goal of the Legislature to ensure that Montana has an equitable property tax system; and

WHEREAS, it is the desire of the Legislature to determine whether existing property tax exemptions contribute to or impede the goal of an equitable property tax system.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tax reform study committee. (1) There is a property tax exemption study committee composed of 10 members. The members must include:

- (a) two members from the house of representatives, one from each party, appointed by the speaker of the house;
- (b) two members from the senate, one from each party, appointed by the senate committee on committees; and
- (c) the following members appointed by the governor:
 - (i) one representative of local government;
 - (ii) one representative of K-12 public schools;
 - (iii) two representatives of property tax-exempt organizations;
 - (iv) one representative of business; and
 - (v) one representative of the executive branch.
- (2) Committee members must be appointed by July 1, 2003.
- (3) In case of a vacancy, a replacement must be selected in the manner of the original appointment.
- (4) The committee is attached to the department of revenue for administrative purposes. The committee may request staff assistance and other resources from legislative agencies, appropriate state agencies, and private entities.
- (5) (a) The members of the committee shall select a presiding officer and may appoint other officers as considered necessary.
 - (b) The committee may adopt rules of procedure for conducting meetings.
- (6) The purpose of the committee is to conduct a study of property tax exemptions. The committee shall determine whether property tax exemptions contribute to or impede the goal of an equitable property tax system and determine whether existing property tax exemption laws should be modified or repealed in order to achieve the goal of an equitable property tax system.
- (7) Based on the analyses conducted under subsection (6), the committee shall submit a written report to the governor and the legislature not later than November 1, 2004, that must include options, if options are considered necessary, and proposed legislation necessary to implement any proposals.
- (8) (a) Legislators serving on the committee must be reimbursed and compensated, as provided for in 5-2-302, for actual and necessary expenses incurred in attending meetings or conducting committee business.
 - (b) Nonlegislative members of the committee may not be reimbursed for expenses incurred in attending meetings or conducting committee business.

Section 2. Appropriation. There is appropriated from the general fund to the committee created pursuant to [section 1] \$6,000 for the biennium for the operating expenses and personnel expenses of the committee.

Section 3. Effective dates. (1) [Section 1 and this section] are effective on passage and approval.

(2) [Section 2] is effective July 1, 2003.

Approved March 28, 2003

CHAPTER NO. 161

[HB 683]

AN ACT REVISING REQUIREMENTS FOR A CHANGE IN A WATER APPROPRIATION RIGHT; AUTHORIZING A CHANGE IN A WATER APPROPRIATION RIGHT WITHOUT PRIOR APPROVAL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR A REPLACEMENT WELL FOR A MUNICIPAL WELL WHEN THE APPROPRIATION DOES NOT EXCEED 450 GALLONS A MINUTE; AUTHORIZING THE CONSTRUCTION OF CERTAIN REDUNDANT WELLS WITHOUT THE PRIOR APPROVAL OF THE DEPARTMENT, SUBJECT TO CERTAIN REQUIREMENTS; AMENDING SECTION 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-402, MCA, is amended to read:

"85-2-402. (Temporary) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and ~~subsection (15)~~ *subsections (15) and (16)* of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), ~~and (15), and (16)~~, the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436, a temporary change authorization for instream use to benefit the fishery resource pursuant to 85-2-408, or water use pursuant to 85-2-439 when authorization does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization pursuant to 85-2-408 or 85-2-439 for instream flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area;

or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) *450 gallons a minute for a municipal well; or*

(B) *35 gallons a minute and 10 acre-feet a year for all other wells;*

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice

to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section. (Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995; sec. 14, Ch. 487, L. 1995.)

85-2-402. (Effective July 1, 2005) Changes in appropriation rights. (1)

The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and ~~subsection (15)~~ subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), ~~and (15), and (16)~~, the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned

uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area;
or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) *450 gallons a minute for a municipal well; or*

(B) *35 gallons a minute and 10 acre-feet a year for all other wells;*

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).<eff>

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-402. (Effective July 1, 2009) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed.

In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and ~~subsection (15)~~ subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), ~~and (15), and (16)~~, the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area;
or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) *An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:*

(i) *withdraws water from the same ground water source as the original well;*
and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section.”

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 28, 2003

CHAPTER NO. 162

[SB 45]

AN ACT INCREASING THE LIMIT ON CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES THAT MAY BE DIRECTLY NEGOTIATED BY A GOVERNMENTAL AGENCY; AMENDING SECTIONS 18-8-212 AND 85-1-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-8-212, MCA, is amended to read:

“18-8-212. Exception. (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed ~~\$10,000~~ \$20,000 may contract for those professional services by direct negotiation.

(2) ~~No~~ An agency may *not* separate service contracts or split or break projects for the purpose of circumventing the provisions of this part.”

Section 2. Section 85-1-219, MCA, is amended to read:

“85-1-219. State-owned works — department approval — bids — procurement of goods and services. (1) For all state-owned works constructed, repaired, altered, improved, maintained, rehabilitated, or reconstructed, the department shall:

(a) review and approve all plans and working drawings prepared by engineers or architects, if any;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder, considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and approve all change orders;

(e) accept the works when completed according to approved plans and specifications.

(2) Except as provided in subsection (3), the department shall solicit sealed, competitive bids before awarding a contract under subsection (1) and may award a contract only after receipt of at least one bid, if reasonably available.

(3) The department may negotiate a contract, without competitive bidding, with a contractor qualified to do business in Montana if:

(a) the department rejects all bids for the work;

(b) an emergency threatening life or property exists;

(c) the proposed construction costs are \$50,000 or less;

(d) an exigency exists; ~~or~~

(e) the cost of goods, nonconstruction services, or professional services is \$15,000 or less; *or*

(f) *the cost of architectural, engineering, and land surveying services is \$20,000 or less.*

(4) (a) Except as provided in subsection (4)(b), the provisions of Title 18, chapter 2, parts 2 through 4, apply to contracts awarded for construction under this section.

(b) The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to contracts for which the proposed construction costs are \$50,000 or less.

(c) The requirements of Title 18, chapter 4, do not apply to contracts for which the cost of goods or nonconstruction services is \$15,000 or less.

(d) (i) ~~The~~ *Except as provided in subsection (4)(d)(ii), the department may contract for professional services by direct negotiation when the cost of professional services covered by the contract does not exceed \$15,000.*

(ii) *The department may contract for architectural, engineering, and land surveying services by direct negotiation when the cost of the services covered by the contract does not exceed \$20,000.*

(iii) The department may not separate service contracts or split or break projects for the purpose of circumventing the provisions of Title 18, chapter 8, part 2."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 28, 2003

CHAPTER NO. 163

[SB 55]

AN ACT PROVIDING FOR A 3-MONTH COMMUNITY COMMITMENT UNLESS THERE HAS BEEN EVIDENCE OF A PREVIOUS INVOLUNTARY COMMITMENT FOR INPATIENT TREATMENT IN A MENTAL HEALTH FACILITY; AND AMENDING SECTION 53-21-127, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-127, MCA, is amended to read:

“53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

(3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court shall:

(a) commit the respondent to the state hospital for a period of not more than 3 months; or

(b) commit the respondent to a community facility or program or to any appropriate course of treatment, which may include housing or residential requirements *or conditions as provided in 53-21-149*, for a period of:

(i) not more than ~~6~~ 3 months; or

(ii) *not more than 6 months in order to provide the respondent with a less restrictive commitment in the community rather than a more restrictive placement in the state hospital if a respondent has been previously involuntarily committed for inpatient treatment in a mental health facility and the court determines that the admission of evidence of the previous involuntary commitment is relevant to the criterion of predictability, as provided in 53-21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided in 53-21-190.*

(4) Except as provided in subsection (3)(b)(ii), a treatment ordered pursuant to this section may not affect the respondent's custody or course of treatment for a period of more than 3 months.

(5) In determining which of the alternatives in subsection (3) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

(6) The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed

by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

(7) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility or program or an appropriate course of treatment as provided in subsection (3)(b), and may not require commitment at the state hospital.

(8) In ordering commitment pursuant to this section, the court shall make the following findings of fact:

(a) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;

(b) the alternatives for treatment that were considered;

(c) the alternatives available for treatment of the respondent;

(d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

(e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

(f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives; and

(g) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives."

Approved March 28, 2003

CHAPTER NO. 164

[SB 56]

AN ACT LIMITING THE PERIOD OF CONFINEMENT FOR A PERSON FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT; REQUIRING THE COURT TO DETERMINE THE MAXIMUM PERIOD OF CONFINEMENT AND TO MAKE SPECIFIC FINDINGS REGARDING VICTIMS; AND AMENDING SECTIONS 46-14-214 AND 46-14-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-214, MCA, is amended to read:

"46-14-214. Form of verdict and judgment — determination of maximum period of confinement — victim findings. (1) When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or defect the defendant did not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment must state that reason.

(2) *The court shall determine on the record the charged offense or offenses or any lesser included offense for which the person otherwise may have been*

convicted and the maximum sentence that the defendant may have received. If there is more than one offense charged, the maximum sentence is limited to the longest single sentence from all charged offenses.

(3) The court shall make specific findings regarding whether there is a victim of the crime for which the defendant is found not guilty and, if so, whether the victim wishes to be notified of any conditional release, discharge, or escape of the defendant.”

Section 2. Section 46-14-301, MCA, is amended to read:

“46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge — limitation on confinement. (1) When a defendant is found not guilty for the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

(2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court may find that the defendant suffers from a mental disease or defect that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others, the defendant may be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

(b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53, chapter 20 or 21.

(3) A person committed to the custody of the director of the department of public health and human services must have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person must be discharged or released or whether the commitment may be extended because the person continues to suffer from a mental disease or defect that renders the person a danger to the person or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

- (a) serious bodily injury or death to the person or others;
- (b) an imminent threat of physical injury to the person or others; or
- (c) substantial property damage.

(4) According to the determination of the court upon the hearing, the person must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. *The period of commitment may not exceed the maximum sentence determined under 46-14-214(2). At the time that the period of the maximum sentence expires, involuntary civil commitment proceedings may be instituted in the manner provided in Title 53, chapter 21.*

(5) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of public health and human services or the person or the representative of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3)."

Approved March 28, 2003

CHAPTER NO. 165

[SB 64]

AN ACT PROVIDING THAT NOTICE OF THE FILING OF PETITIONS FOR CIVIL COMMITMENT OF PERSONS ALLEGED TO SUFFER FROM A MENTAL DISORDER BE GIVEN TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND ANY MENTAL HEALTH FACILITY TO WHICH THE PETITIONS REQUIRE COMMITMENT; AMENDING SECTION 53-21-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-121, MCA, is amended to read:

"53-21-121. Petition for commitment — contents of — notice of. (1) The county attorney, upon the written request of any person having direct knowledge of the facts, may file a petition with the court alleging that there is a person within the county who is suffering from a mental disorder and who requires commitment pursuant to this chapter.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental disorder, including a report by a mental health professional if any, a statement of the disposition sought pursuant to 53-21-127, and the need for commitment;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the respondent for whom evaluation is sought;

- (e) the name and address of the respondent's next of kin to the extent known to the county attorney and the person requesting the petition;
- (f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;
- (g) the name, address, and telephone number of the attorney, if any, who has most recently represented the respondent for whom evaluation is sought; if there is no attorney, there must be a statement as to whether to the best knowledge of the person requesting the petition the respondent for whom evaluation is sought is indigent and unable to afford the services of an attorney; ~~and~~

(h) a statement of the rights of the respondent, which must be in conspicuous print and identified by a suitable heading; *and*

(i) *the name and address of the mental health facility to which it is proposed that the respondent may be committed, if known.*

(3) Notice of the petition must be hand-delivered to the respondent and to the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent must be hand-delivered ~~or~~, mailed, *or sent by a facsimile transmission* to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, ~~and~~ any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent, *the director of the department or the director's designee, and the mental health facility to which the respondent may be committed, if known.* The notice may provide, other than as to the respondent and the respondent's counsel, that no further notice will be given unless written request is filed with the clerk of court."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 28, 2003

CHAPTER NO. 166

[SB 87]

AN ACT REMOVING THE DEPARTMENT OF AGRICULTURE'S AUTHORITY TO MAKE GRANTS UNDER THE VERTEBRATE PEST MANAGEMENT PROGRAM; AMENDING SECTION 80-7-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-1102, MCA, is amended to read:

"80-7-1102. Expenditures authorized. The department may make expenditures to:

- (1) purchase equipment, materials, supplies, and personal services ~~which~~ *that* are necessary to execute the functions imposed on it by this part;

- (2) obtain data on vertebrate pesticide registration and research information on alternative vertebrate pest management techniques;
- (3) conduct research or evaluation studies;
- (4) ~~make grants to or~~ enter contracts with individuals, universities, other states, state or federal agencies, or other entities it considers appropriate to conduct vertebrate pest management projects;
- (5) maintain and support registration of current rodenticides such as compound 1080, strychnine, and zinc phosphide;
- (6) seek registration of alternative rodenticides;
- (7) develop and implement new vertebrate pest management methods and crop damage assessment techniques;
- (8) support vertebrate pest management research and evaluation projects;
- (9) educate the agricultural community regarding vertebrate pest management problems and needs;
- (10) educate the general public regarding vertebrate pest concerns and the need for vertebrate pest management; and
- (11) perform any other related activities.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 28, 2003

CHAPTER NO. 167

[SB 102]

AN ACT INCREASING TO 40 YEARS FROM 10 YEARS THE ALLOWABLE LENGTH OF TIME THAT THE DEPARTMENT OF TRANSPORTATION MAY LEASE AIRPORTS OR SIMILAR PROPERTY; AND AMENDING SECTION 67-2-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-2-302, MCA, is amended to read:

“67-2-302. State airports — operation. (1) The department may:

- (a) lease, for a term not exceeding ~~10~~ 40 years, airports or other air navigation facilities or real property acquired or set apart for airport purposes to private parties, a municipal or state government or the national government, or a department of either ~~of them~~, for operation;
- (b) lease or assign, for a term not exceeding 10 years, space, area, improvements, or equipment on those airports to private parties, a municipal or state government or the national government, or a department of either for operation or use consistent with the purposes of this title;
- (c) sell any part of those airports, other air navigation facilities, or real property to a municipal or state government or to the United States or a department or instrumentality ~~thereof of the United States for purposes incidental to or for aeronautical purposes or purposes incidental thereto~~; and
- (d) confer the privilege of concessions for supplying goods, commodities, things, services, and facilities upon the premises of those airports. However, in

~~so doing~~ *conferring the concessions*, the public may not be deprived of its rightful, equal, and uniform use ~~thereof~~ *of the subject of the concessions*.

(2) ~~†~~ *The department* may determine the charges or rental for the use of state airports, the charges for service or accommodations under its control, and the terms and conditions under which the ~~properties~~ *property* may be used. However, the public may not be deprived of its rightful, equal, and uniform use of the property. Charges ~~shall~~ *must* be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state.

(3) The state has, and the department may enforce, agisters' liens as provided by law for repair, improvement, storage, or care of any personal property.

(4) The department may employ persons or contract with persons or firms to provide law enforcement in and around state airports whenever required by federal aviation regulations."

Ap proved March 28, 2003

CHAPTER NO. 168

[HB 30]

AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO PERMIT THE INSTALLATION OF ELECTRONIC COMMUNICATION EQUIPMENT AND ELECTRONIC INFORMATIONAL KIOSKS ON A HIGHWAY RIGHT-OF-WAY, INCLUDING A CONTROLLED-ACCESS FACILITY; ALLOWING THE DEPARTMENT TO SET TERMS AND CONDITIONS FOR THE EQUIPMENT OR KIOSKS; ALLOWING A FEE AND PROVIDING FOR THE DEPOSIT OF THE FEE; AND AMENDING SECTION 60-5-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-5-110, MCA, is amended to read:

"60-5-110. Commercial enterprise or structure prohibited — exception. (1) Except as provided in 60-5-505 and subsection (2) of this section, ~~no~~ a commercial enterprise or structure ~~shall~~ *may not* be ~~constructed or~~ operated on the publicly owned *or leased* right-of-way of a controlled-access highway or *controlled-access* facility ~~or on any publicly leased land used in connection therewith~~.

(2) *The department may, under the terms and conditions that it considers appropriate, install or allow others to install electronic communication equipment or electronic informational kiosks on the right-of-way of any state highway, including a controlled-access facility. The department may charge a fee for the use of the equipment or kiosk. The fees must be deposited in the nonrestricted highway state special revenue account to be used for highway purposes.*"

Ap proved March 28, 2003

CHAPTER NO. 169

[HB 60]

AN ACT PROHIBITING THE GOVERNOR FROM DIRECTING A REDUCTION IN SPENDING FOR THE MONTANA SCHOOL FOR THE DEAF AND BLIND IN THE EVENT OF A PROJECTED GENERAL FUND BUDGET DEFICIT; AMENDING SECTION 17-7-140, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-140, MCA, is amended to read:

“17-7-140. Reduction in spending. (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(b), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium. An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(b) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time that the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must

be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) Reductions in spending for the following may not be directed by the governor:

- (a) payment of interest and principal on state debt;
- (b) the legislative branch;
- (c) the judicial branch;
- (d) the school BASE funding program, including special education; ~~and~~
- (e) salaries of elected officials during their terms of office; *and*
- (f) *the Montana school for the deaf and blind.*

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than 2% of the general fund appropriations for the second fiscal year of the biennium. In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid, and anticipated reversions.

(b) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in the revenue estimate established pursuant to 5-18-107, the budget director shall notify the revenue and transportation interim committee of the estimated amount. Within 20 days of notification, the revenue and transportation interim committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue and transportation interim committee prior to certifying a projected general fund budget deficit to the governor."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to fiscal years beginning on or after July 1, 2003.

Approved March 28, 2003

CHAPTER NO. 170

[HB 656]

AN ACT ELIMINATING THE SAFETY EMPLOYMENT EDUCATION AND TRAINING ADVISORY COMMITTEE; AMENDING SECTIONS 39-71-1501, 39-71-1502, AND 39-71-1503, MCA; REPEALING SECTION 2-15-1708, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-1501, MCA, is amended to read:

"39-71-1501. Short title. ~~Section 2-15-1708 and this~~ This part may be cited as the "Montana Safety Culture Act"."

Section 2. Section 39-71-1502, MCA, is amended to read:

“39-71-1502. Purpose. The purpose of ~~2-15-1708~~ and this part is to reduce the incidence of occupational injury and illness by promoting safety in the workplace in order to control the costs of claims for workers' compensation insurance. The creation of a safety culture requires employers to provide training and education to make safety awareness part of the requirement for each worker's satisfactory job performance and requires the department to promote safety awareness for the public through the education and preparation of each student for entrance into the labor market. A reduction in workplace injuries, illnesses, and deaths through enhanced safety on the job benefits the public as well as the employers and the employees by lowering both financial and physical costs. Ensuring immunity to insurers in the provision of safety consultation services encourages and promotes safety in the workplace and improves the relationship between employers and employees.”

Section 3. Section 39-71-1503, MCA, is amended to read:

“39-71-1503. Safety consultation. (1) As used in ~~2-15-1708~~ and this part, “safety consultation services” means assistance rendered by an insurer to advise and aid an insured employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to an insured employer, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise insured employers relative to risk, exposure, and experience in the insured employer's business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures.”

Section 4. Repealer. Section 2-15-1708, MCA, is repealed.

Section 5. Effective date. [This act] is effective July 1, 2003.

Approved March 28, 2003

CHAPTER NO. 171

[SB 81]

AN ACT AUTHORIZING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO AWARD AN HONORARY HIGH SCHOOL DIPLOMA TO CERTAIN VETERANS WHO DID NOT RECEIVE A DIPLOMA DUE TO MILITARY SERVICE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Honorary high school diploma for certain veterans. (1)

The superintendent of public instruction may award an honorary high school diploma to a current or former Montana resident who:

- (a) did not receive a high school diploma; and
 - (b) actively served in the United States armed services during World War II from 1939 through 1947, during the Korean war from 1950 through 1953, or during the Vietnam conflict from 1961 through 1975; and
 - (i) died in active service;
 - (ii) was honorably discharged; or
 - (iii) was released from active duty because of a service-related disability.
- (2) (a) The superintendent shall identify acceptable documentation of eligibility and establish procedures for applying for an honorary diploma.
- (b) The superintendent may accept an affidavit to support the award if acceptable documentation is not readily available from the military or other sources.
- (3) An eligible person shall apply for the diploma on a form provided by the superintendent. If an eligible person is deceased or incapacitated, an immediate family member may apply on the person's behalf.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 3, part 1, and the provisions of Title 20, chapter 3, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 28, 2003

CHAPTER NO. 172

[SB 190]

AN ACT ESTABLISHING CRITERIA FOR WHEN A LICENSED DENTAL HYGIENIST MAY PROVIDE DENTAL HYGIENE PREVENTATIVE SERVICES WITHOUT THE PRIOR AUTHORIZATION OR PRESENCE OF A LICENSED DENTIST; DEFINING "PUBLIC HEALTH FACILITY" AND "PUBLIC HEALTH SUPERVISION"; REQUIRING THE BOARD OF DENTISTRY TO ADOPT RULES DEFINING THE QUALIFICATIONS NECESSARY TO OBTAIN A LIMITED ACCESS PERMIT; REQUIRING A LICENSED DENTAL HYGIENIST PRACTICING UNDER PUBLIC HEALTH SUPERVISION TO OBTAIN A LIMITED ACCESS PERMIT AND TO FOLLOW CERTAIN GUIDELINES; AND AMENDING SECTION 37-4-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-4-405, MCA, is amended to read:

"37-4-405. Dental hygienist to practice under supervision of licensed dentist — exceptions — definitions. (1) A licensed dental hygienist, ~~with the permission of the supervising dentist,~~ may:

- (a) ~~with the permission of the supervising dentist,~~ practice in the office of a licensed and actively practicing dentist, ~~in a public or private institution, under~~

~~a board of health, or in a public clinic authorized by the board,~~ under the general supervision of a licensed dentist; or

(b) provide dental hygiene preventative services in a public health facility under the general supervision of a licensed dentist or, subject to the provisions of subsection (4), under public health supervision. however, the

(2) A dental hygienist may give instruction in oral hygiene without the direct supervision or general supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic.

~~(2)(3) For the purposes of this section, "supervision" is defined as follows the following definitions apply:~~

(a) "direct supervision" means treatment by a dental auxiliary or licensed dental hygienist provided with the intent and knowledge of the dentist. The treatment must be performed while the dentist is on the premises.

(b) "general supervision" means treatment, except the administration of local anesthesia, by a licensed dental hygienist provided with the intent and knowledge of the dentist licensed and residing in the state of Montana. The supervising dentist need not be on the premises.

(c) "public health facility" means:

(i) federally qualified health centers; federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b; nursing homes; extended care facilities; home health agencies; group homes for the elderly, disabled, and youth; head start programs; migrant worker facilities; local public health clinics and facilities; public institutions under the department of public health and human services; and mobile public health clinics; and

(ii) other public health facilities and programs identified by the board under subsection (6); and

(d) "public health supervision" means the provision of limited dental hygiene preventative services without the prior authorization or presence of a licensed dentist in a public health facility.

(4) (a) A licensed dental hygienist practicing under public health supervision may provide dental hygiene preventative services that include removal of deposits and stains from the surfaces of teeth, the application of topical fluoride, polishing restorations, root planing, placing of sealants, oral cancer screening, exposing radiographs, and charting of services provided.

(b) A licensed dental hygienist practicing under public health supervision may not provide dental hygiene preventative services that include local anesthesia, denture soft lines, temporary restorations, or any other service prohibited under 37-4-401.

(c) A licensed dental hygienist practicing under public health supervision shall provide:

(i) for the referral to a licensed dentist of any patient needing treatment outside the scope of practice authorized for a licensed dental hygienist under this subsection (4); and

(ii) treatment based upon medical and dental health guidelines adopted by rule by the board.

(5) (a) A dental hygienist practicing under public health supervision shall obtain a limited access permit from the board.

(b) The board shall adopt rules:

(i) defining the qualifications necessary to obtain a limited access permit; and

(ii) providing a process for obtaining a limited access permit.

(c) The provision of services under a limited access permit is limited to patients or residents of facilities or programs who, due to age, infirmity, disability, or financial constraints, are unable to receive regular dental care.

(6) The board may identify, by rule, other public health facilities and programs, in addition to those listed in subsection (3)(c), at which services under a limited access permit may be provided.”

Approved March 28, 2003

CHAPTER NO. 173

[SB 202]

AN ACT ALLOWING THE BOARD OF PUBLIC EDUCATION TO USE A PORTION OF THE TEACHER CERTIFICATION FEE FOR ACTIVITIES IN SUPPORT OF THE BOARD'S CONSTITUTIONAL AND STATUTORY DUTIES; AND AMENDING SECTION 20-4-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-109, MCA, is amended to read:

“20-4-109. Fees for teacher and specialist certificates. (1) A person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee not to exceed \$6 for each school fiscal year that the certificate is valid. In addition to this fee, a person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of \$6. The fees must be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer to the credit of the state special revenue fund account, created in subsection (2), to be used in the following manner:

(a) \$4 for expenses of the certification standards and practices advisory council created in 2-15-1522;

(b) \$2 to the board of public education ~~to be used by~~ and the certification standards and practices advisory council for ~~research in accordance with the activities in support of the constitutional and statutory duties of the board of public education and the certification standards and practices advisory council provided for in 20-4-133.~~

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account.”

Approved March 28, 2003

CHAPTER NO. 174

[HB 154]

AN ACT GENERALLY REVISING PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; REVISING THE POWERS OF THE BOARD; REVISING THE DUTIES OF EMPLOYERS; CLARIFYING METHODS OF PURCHASING SERVICE; CLARIFYING PROVISIONS ON ESTABLISHING AN ARRANGEMENT FOR PAYMENT OF EXCESS BENEFITS; CLARIFYING DATES RELATED TO PURCHASING OUT-OF-STATE PUBLIC TEACHING SERVICE; PROVIDING THAT BENEFITS MUST BE CORRECTED UPON DISCOVERY OF A FORGED SIGNATURE; PROVIDING THAT COST-OF-LIVING INCREASES MUST BE INCLUDED WITH RESPECT TO MAXIMUM BENEFIT AND MAXIMUM COMPENSATION LIMITS; REVISING THE WAITING PERIOD REQUIRED BEFORE RECEIVING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; REVISING PROVISIONS ON TRANSFERRING CREDIT FOR PART-TIME EMPLOYMENT; CLARIFYING PROVISIONS ON RESTORATION OF MEMBERSHIP; ALLOWING BENEFICIARIES TO HAVE CERTAIN INSURANCE PREMIUMS WITHHELD FROM THEIR BENEFIT PAYMENTS; AMENDING SECTIONS 19-20-101, 19-20-201, 19-20-208, 19-20-212, 19-20-402, 19-20-414, 19-20-705, 19-20-710, 19-20-715, 19-20-718, 19-20-719, 19-20-805, 19-20-905, AND 19-20-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code;

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

(9) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a governmental plan, as the code provided on July 1, 1999.

(10) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without an actuarial or similar reduction in the benefits because of retirement before a specified age.

(12) "Part-time service" means service that is less than full-time or that totals less than 180 days in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

(14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code.

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit.

(23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 2. Section 19-20-201, MCA, is amended to read:

"19-20-201. Administration by retirement board. (1) The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and it is the duty of the retirement board to:

(a) establish rules necessary for the proper administration and operation of the retirement system;

(b) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(c) keep a record of all its proceedings, which must be open to public inspection;

(d) submit a report to the office of budget and program planning ~~as a part of the information required by 17-7-111,~~ detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;

(e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(f) prepare an annual valuation of the assets and liabilities of the retirement system;

(g) prescribe a form for membership application that will provide adequate and necessary information for the proper operation of the retirement system;

(h) annually determine the rate of regular interest as prescribed in 19-20-501;

(i) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(j) perform other duties and functions as are required to properly administer and operate the retirement system.

(2) In discharging its duties, the board, or an authorized representative of the board, may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104.

~~(2)~~(3) The board may send retirement-related material to employers and the campuses of the Montana university system for delivery to employees. To

facilitate distribution, employers and those campuses shall each provide the board with a point of contact who is responsible for distribution of the material provided by the board.”

Section 3. Section 19-20-208, MCA, is amended to read:

“19-20-208. Duties of employer. Each employer shall:

(1) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(2) transmit to the executive director of the retirement board the employer’s contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board’s duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(5) *each month, report the name, social security number, and gross earnings of each retired member of the system who has been employed in a part-time teaching, administrative, or faculty position under the reemployment provisions of 19-20-804;*

~~(5)~~(6) whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

~~(6)~~(7) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

~~(7)~~(8) notify the retirement board of the employment of a person eligible for membership and forward the person’s membership application to the board;

~~(8)~~(9) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member’s retirement.”

Section 4. Section 19-20-212, MCA, is amended to read:

“19-20-212. (Effective on occurrence of contingency) General internal revenue service qualification rules. (1) The board shall distribute the corpus and income of the system to the members and their beneficiaries in accordance with the system’s law. The corpus and income may not, at any time before the satisfaction of all liabilities with respect to members and their beneficiaries, be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, from death, or for any other reason may not be applied to increase the benefits that any member would otherwise receive under the state’s law. However, forfeitures may be used to reduce the costs of administration.

(3) Distributions from the system may be made only upon retirement, separation from service, disability, or death.

(4) Notwithstanding any provision of law to the contrary, contributions, benefits, and service credit with respect to qualified military service must be provided in accordance with section 414(u) of the Internal Revenue Code and the

federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq.

(5) The board may maintain a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code. ~~The~~ *If the board elects to establish a qualified governmental excess benefit arrangement, the board shall adopt rules for the necessary and appropriate procedures for the administration of the benefit arrangement in accordance with the Internal Revenue Code. The amount of any annual benefit that would exceed the limitations imposed by section 415 of the Internal Revenue Code must be paid from the benefit arrangement. The amount of a contribution that would exceed the limitation imposed by section 415 of the Internal Revenue Code must be credited to the benefit arrangement. The benefit arrangement must be a separate part of the system. The benefit arrangement is subject to the following requirements:*

(a) The benefit arrangement must be maintained solely for the purpose of providing to members in the system that part of the member's annual benefit or contribution otherwise payable under the terms of this chapter that exceeds the limitations on benefits or contributions imposed by section 415 of the Internal Revenue Code.

(b) Members may not elect, directly or indirectly, to defer compensation to the benefit arrangement.

(6) The limitation year for purposes of section 415 of the Internal Revenue Code is the school year beginning September 1 and ending August 31.

(7) The plan year is the fiscal year beginning July 1 and ending June 30."

Section 5. Section 19-20-402, MCA, is amended to read:

"19-20-402. Creditable service for employment in out-of-state public and federal schools. (1) (a) A member who has 5 years of active membership service, who has completed 1 full year of active membership in Montana subsequent to the member's out-of-state service, and who contributes to the retirement system as provided in subsection (2) may receive creditable service in the retirement system for out-of-state service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member shall roll the member's contributions over into the retirement system or must receive a refund of the member's contributions for the service before purchasing service under this section.

(c) For the purpose of this section, out-of-state service means service performed:

(i) within the United States in a federal or other public school or institution; and

(ii) outside the United States in a federal or other public or private school or institution.

(2) (a) To purchase the service described in subsection (1)(c)(i), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service, plus interest. The

contribution rate must be the rate in effect at the time the member is eligible for the service.

(b) To purchase the service described in subsection (1)(c)(ii), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service or after *the salary was reported to the system for the fiscal year beginning* July 1, 1989, whichever date is later, plus interest. The contribution rate must be the rate in effect at the time the member is eligible to purchase the service or the rate in effect on July 1, 1989, whichever date is later.

(c) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service.

(4) The contributions and interest required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 6. Section 19-20-414, MCA, is amended to read:

~~19-20-414. Rollover or transfer of accumulated contributions~~
Payment methods for purchase of service credit. (1) A member who is eligible to purchase service under this chapter may at any time before retirement apply to ~~roll over or transfer the member's accumulated contributions on deposit with any other eligible retirement plan~~ purchase the service credit by making payment as provided in this section.

(2) Subject to subsection (3), service credit may be purchased by one, or a combination of, the following methods:

(a) a lump-sum payment;

(b) installment payments;

(c) direct rollover of eligible distributions from a retirement plan in section 402(c)(8)(B)(iii) or 402(c)(8)(B)(iv) of the Internal Revenue Code;

(d) rollover of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be included in gross income;

(e) a direct trustee-to-trustee transfer from a governmental 457(b) deferred compensation plan or a 403(b) tax-sheltered annuity for permissive service credit, as defined in section 415(n) of the Internal Revenue Code.

(3) (a) The total amount transferred or rolled over to the retirement system pursuant to subsection (2), may not exceed the amount due to purchase the service.

~~(2)(b)~~ (b) If, in the case of a transfer, the transferred account includes both tax-deferred and taxed amounts, the transferring agency shall identify the member's tax-deferred and taxed amounts at the time the transfer is made.

~~(3)~~(4) To the extent permitted by section 401(a)(31) of the Internal Revenue Code and as limited by ~~subsection (1)~~ *this section*, the board shall accept a direct rollover of eligible distributions from another eligible retirement plan.

(5) *If the member dies before having completed the payment required to purchase the service that the member had applied to purchase, the member's surviving spouse may, subject to the rules and regulations of the Internal Revenue Code, apply to complete the member's service purchase as provided in this section. The surviving spouse must apply to complete the payments and pay the balance due to the system prior to the distribution of benefits.*

Section 7. Section 19-20-705, MCA, is amended to read:

"19-20-705. Correction of erroneous payments errors. (1) If a change or error in the records results in a member or beneficiary receiving from the retirement system more or less than the member or beneficiary would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled will be paid.

(2) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve an arrangement to collect the correct amount, including any or all of the following arrangements:

- (a) adjustment of subsequent payments to the board from a member or an employer;
- (b) collection of installment payments or a lump-sum payment from an employer; or
- (c) collection of installment payments, a lump-sum payment, or a rollover payment from a member.

(3) *Upon discovery of a forged signature on a retirement benefit application, the benefit must be corrected as provided in subsection (1).*

Section 8. Section 19-20-710, MCA, is amended to read:

"19-20-710. Maximum benefit limitation. A monthly benefit paid under the retirement system provided for in this chapter may not exceed the annual limits on benefits as specified in section 415 of the Internal Revenue Code as *adjusted for cost-of-living increases* for calendar years 1988 and ~~thereafter~~ *succeeding years*. However, benefits in excess of those limits may be paid from ~~an~~ *a qualified governmental* excess benefit arrangement subject to ~~19-20-718~~ *19-20-212.*

Section 9. Section 19-20-715, MCA, is amended to read:

"19-20-715. Compensation limit. (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as *adjusted for cost-of-living increases* must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. *Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.*

(2) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the compensation reported in each year of the 3 years that make up

the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board.

(3) Earned compensation in excess of the amount specified in subsection (2) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716."

Section 10. Section 19-20-718, MCA, is amended to read:

"19-20-718. (Effective on occurrence of contingency) Maximum contribution limitation. (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system ~~if the amount of the contribution that would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code~~ by using the following methods:

(a) ~~If the system's law requires a lump sum payment for purchase of service credit, the~~ The board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified *governmental* excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code *if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212.*

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of sections 125, 132(f), 403(b), or 457 of the Internal Revenue Code. *Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively.*"

Section 11. Section 19-20-719, MCA, is amended to read:

"19-20-719. Guaranteed annual benefit adjustment — rulemaking. (1) Subject to subsection (3), on January 1 of each year, the retirement allowance payable to each recipient who is eligible under subsection (2) must be increased by 1.5%.

(2) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the ~~retiree's most recent~~

~~retirement effective date is~~ retiree has received at least 36 ~~months~~ monthly retirement benefit payments prior to January 1 of the year in which the adjustment is to be made.

(3) On January 1, 2002, and January 1 of each year following the system's biennial valuation, the board may increase the annual benefit adjustment provided in subsection (1) until a maximum of 3% is guaranteed if:

(a) the period required to amortize the system's actuarial unfunded liability, as determined by the most recent biennial valuation, adjusted for any benefit enhancement enacted by the legislature since the most recent biennial valuation, is less than 25 years;

(b) sufficient funds are available to increase the guaranteed annual benefit adjustment by at least 0.1%; and

(c) the increase granted by the board would not cause the amortization period, as of the most recent valuation, to exceed 25 years.

(4) The board shall adopt rules to administer the provisions of this section."

Section 12. Section 19-20-805, MCA, is amended to read:

"19-20-805. Earned compensation — part-time service. (1) The earned compensation of a member who retired under 19-20-802 or 19-20-804 and had less than 3 consecutive years of full-time service during the 5 years *immediately* preceding the member's ~~retirement~~ termination is the compensation that the member would have earned in the ~~final~~ 3 years used to calculate average final compensation had the member's part-time service been full-time service. To determine the compensation that the member would have earned, the compensation reported must be divided by the part-time service credited to the member's account.

(2) (a) *Subject to subsection (2)(b), if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service reported to the teachers' retirement system, the member's average final compensation may be calculated as follows:*

(i) *if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or*

(ii) *if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit, divided by the member's part-time teachers' retirement system service credit.*

(b) *Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter."*

Section 13. Section 19-20-905, MCA, is amended to read:

“19-20-905. Cancellation of allowance and restoration of membership. (1) If a disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as provided under 19-20-302, the retiree’s retirement allowance must cease. If the retiree is employed *full-time* by an employer covered under this chapter, the retiree shall again become an active member of the retirement system. Any prior service certificate on the basis of which the member’s service was computed at the time of the member’s disability retirement must be restored to full force, and upon the member’s subsequent retirement, the member must be credited with the prior service and all subsequent service as a member.

(2) If the member is restored to active membership on or after the attainment of the age of 55 years, the member’s retirement allowance upon subsequent retirement may not exceed the retirement allowance that the member would have received had the member remained in service during the period of the member’s previous retirement or the sum of the retirement allowance that the member was receiving immediately prior to the member’s last restoration to service and the retirement allowance that the member would have received on account of the member’s service since the member’s last restoration had the member entered service at that time as a new member.”

Section 14. Section 19-20-1101, MCA, is amended to read:

“19-20-1101. Withholding of group insurance premium from retirement allowance. (1) A retired member who is a participant in an employer-sponsored group insurance plan may elect to have the monthly premium for ~~such~~ the group insurance withheld from ~~his~~ the member’s retirement allowance by the retirement system and paid directly to the insurance carrier or employer of record at the time of retirement.

(2) *Upon the death of a retired member, the beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld from a monthly retirement benefit and paid directly to the employer or the employer’s insurance carrier.”*

Section 15. Effective date. [This act] is effective on passage and approval.

Ap proved March 31, 2003

CHAPTER NO. 175

[HB 621]

AN ACT REMOVING THE DESIGNATION OF THE MONTANA CHIROPRACTIC LEGAL PANEL AS A STATE AGENCY; AMENDING SECTION 27-12-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-12-104, MCA, is amended to read:

“27-12-104. Creation of panel. There is a Montana chiropractic legal panel. The panel is ~~a state agency~~ allocated to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply.”

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved March 31, 2003

CHAPTER NO. 176

[HB 635]

AN ACT REVISING LAWS RELATING TO ABANDONED, WRECKED, AND DISABLED VEHICLES; ALLOWING CERTAIN ABANDONED VEHICLES TO BE DISPOSED OF IN THE SAME MANNER AS JUNK VEHICLES; PERMITTING A QUALIFIED TOW TRUCK OPERATOR TO OBTAIN A CERTIFICATE OF RELEASE AND A CERTIFICATE OF OWNERSHIP FOR CERTAIN ABANDONED VEHICLES; PERMITTING A QUALIFIED OPERATOR TO OBTAIN A CERTIFICATE OF OWNERSHIP FOR CERTAIN WRECKED OR DAMAGED VEHICLES; AND AMENDING SECTIONS 61-12-402, 61-12-404, 61-12-405, AND 61-12-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-402, MCA, is amended to read:

"61-12-402. Notice to owner. (1) Within 72 hours after a vehicle is removed and held by or at the direction of the Montana highway patrol, the highway patrol shall notify the sheriff of the county or the chief of police of the city in which the vehicle is being stored of where and when the vehicle was taken into custody and of where the vehicle is being stored. In addition, the Montana highway patrol shall furnish the sheriff or the chief of police:

- (a) a complete description of the vehicle, including year, make, model, serial number, and license number if available;
- (b) any costs incurred to that date in the removal, storage, and custody of the vehicle; and
- (c) any available information concerning the vehicle's ownership.

(2) The highway patrol shall notify the sheriff of the county or the chief of police of the city in which the vehicle was taken into custody of the location at which the vehicle is being stored if the vehicle was removed to a different county.

(3) The sheriff or the city police in the jurisdiction where the vehicle is being stored shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If a name and address are ascertained, the sheriff or the city police shall notify the owner, lienholder, or person of the location of the vehicle.

(4) If the vehicle is registered in the office of the department, notice is considered to have been given when a certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid, is mailed at least 30 days before the vehicle is sold.

(5) If the identity of the last-registered owner cannot be determined, if the registration does not contain an address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle is being stored is sufficient to meet all requirements of notice pursuant to this part. The notice by publication may contain multiple listings of abandoned vehicles. The notice must be provided in the same manner as prescribed in 25-13-701(1)(b).

(6) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required

search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (3) through (5). The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

(7) (a) A vehicle found by law enforcement officials to be a junk vehicle, as defined by 75-10-501, and that has a value of \$500 or less may be directly submitted for disposal in accordance with the provisions of Title 75, chapter 10, part 5, upon a release given by the sheriff or the city police. The county representative designated to implement the county motor vehicle recycling and disposal program pursuant to 75-10-521 for the county where the vehicle is being stored shall determine the value of the vehicle. In the release, the sheriff or the city police shall include a description of the vehicle, including year, make, model, serial number, and license number if available. ~~A release provided by If the vehicle is being stored by a motor vehicle wrecking facility, the sheriff or the city police under this section must be transmitted shall transmit the release to the motor vehicle wrecking facility and must be considered by that the facility shall consider the release to meet the requirements for records under 75-10-512 and 75-10-513. If the vehicle is being stored by a qualified tow truck operator, as defined in 61-8-903, the sheriff or the city police shall transmit the release to the operator.~~ Vehicles described in this section may be submitted for disposal without notice and without a required holding period.

(b) *A licensed vehicle that otherwise meets the definition of a junk vehicle, as defined in 75-10-501, and that has a value of \$500 or less may be directly submitted for disposal as provided in subsection (7)(a).*

Section 2. Section 61-12-404, MCA, is amended to read:

“61-12-404. Sale or release of vehicle if not reclaimed. (1) If a vehicle is not reclaimed, as provided in 61-12-403, within 30 days after notification by certified mail or prescribed publication, the sheriff of the county or the city police of the city in which the vehicle is being stored ~~shall~~ may sell it at public auction in the manner provided in 25-13-701 through 25-13-709.

(2) *If the sheriff or city police elect not to sell a vehicle under subsection (1) and the vehicle is being stored by a qualified tow truck operator, as defined in 61-8-903, the sheriff or city police shall release the vehicle to the qualified tow truck operator.*

~~(2)(3)~~ (3) After a vehicle has been sold pursuant to subsection (1) or released pursuant to subsection (2), the former owner or person entitled to possession has no further right, title, claim, or interest in or to the vehicle.”

Section 3. Section 61-12-405, MCA, is amended to read:

“61-12-405. Certificate of sale or release. (1) ~~(a) When any~~ *If a vehicle is sold as provided in 61-12-404(1), the sheriff or the city police at the time of the payment of the purchase price shall execute a certificate of sale in duplicate and shall deliver the original certificate to the purchaser and retain the copy.*

~~(2)(b)~~ (b) The certificate of sale ~~shall~~ must contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle, and a stipulation that no warranty is made as to the condition or title of the vehicle.

(2) (a) *If a vehicle is released as provided in 61-12-404(2), the sheriff or city police shall execute a certificate of release to the qualified tow truck operator in*

duplicate and shall deliver the original certificate to the operator and retain the copy.

(b) The certificate of release must contain the name and address of the operator, the date of release, a description of the vehicle, including year, make, model, serial number, and license number if available, and a stipulation that no warranty is made as to the condition or title of the vehicle."

Section 4. Section 61-12-406, MCA, is amended to read:

"61-12-406. Issuing certificate of ownership. The department shall issue a certificate of ownership upon presentation by the purchaser of the certificate of sale *or upon presentation by the operator of a certificate of release and payment of the fees required by law.*"

Section 5. Notice to owner — payment of removal and storage costs — request for reissuance of certificate of ownership. (1) Within 15 days after the date that a wrecked or disabled vehicle is removed from a public roadway by a qualified tow truck operator at the request of a law enforcement officer under 61-8-908, the qualified tow truck operator shall send a certified letter to the vehicle owner or lienholder, as shown in the department's records, notifying the owner or lienholder that the vehicle has been towed and is being stored by the qualified tow truck operator. The certified letter must be sent return receipt requested and postage prepaid to the owner or lienholder at the latest address shown in the department's records.

(2) The owner or lienholder of the vehicle may not reclaim the vehicle until the owner, the lienholder, or the owner's or lienholder's insurance provider has paid the costs incurred by the qualified tow truck operator in removing and storing the vehicle.

(3) If the removal and storage costs have not been paid within 60 days after the date that the notice provided for in subsection (1) was postmarked, the qualified tow truck operator may request, on a form provided by the department, that the department cancel the vehicle's certificate of ownership, remove any perfected security interest, and reissue the certificate of ownership to the qualified tow truck operator. In the request, the qualified tow truck operator shall certify that the notice required in subsection (1) was sent and that the owner or lienholder has not made payment as required in subsection (2). A copy of the notice required in subsection (1) must be attached to the request.

(4) Upon receipt of a valid request as provided in subsection (3), the department shall cancel the certificate of ownership to the vehicle and reissue the certificate of ownership to the qualified tow truck operator. The qualified tow truck operator shall pay all required fees on the vehicle. After the department has reissued the certificate of ownership, the former owner or lienholder has no further right, title, claim, or interest in or to the vehicle.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 61, chapter 8, part 9, and the provisions of Title 61, chapter 8, part 9, apply to [section 5].

Approved March 31, 2003

CHAPTER NO. 177

[SB 23]

AN ACT PROVIDING THAT COMMODITY PRODUCERS HOLDING BAILMENT CONTRACTS HAVE A FIRST PRIORITY LIEN; AMENDING SECTION 80-4-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-420, MCA, is amended to read:

“80-4-420. Producer’s lien. (1) Agricultural commodities contained on the premises of a public warehouse operator or commodity dealer, including agricultural commodities owned by the warehouse operator or commodity dealer, are subject to a first priority lien in favor of holders of outstanding warehouse receipts, purchase contracts, scale weight tickets, *bailment contracts*, or any other evidence of storage or sale.

(2) The lien must be preferred to a lien or security interest in favor of a creditor of the warehouse operator or commodity dealer regardless of the time when the creditor’s lien or security interest attached to the agricultural commodities. Notice of the lien need not be filed in order to perfect the lien.

(3) The lien is discharged as to agricultural commodities sold by the warehouse operator or commodity dealer to a buyer in the ordinary course of business. The sale does not discharge the lien in favor of an individual holder of outstanding warehouse receipts, purchase contracts, scale weight tickets, *bailment contracts*, or other evidence of storage or sale, on the remaining agricultural commodities on the premises.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 31, 2003

CHAPTER NO. 178

[SB 26]

AN ACT GENERALLY REVISING TITLE LOAN LAWS; CLARIFYING THE DEFINITION OF “FINANCIAL INSTITUTIONS”; ESTABLISHING A SPECIAL REVENUE ACCOUNT UNDER THE MONTANA TITLE LOAN ACT TO BE USED BY THE DEPARTMENT OF ADMINISTRATION IN ITS SUPERVISORY CAPACITY; DEFINING “TITLE LOAN”; CREATING A CIVIL PENALTY FOR CERTAIN ACTIONS BY TITLE LENDERS; ALLOWING TITLE LENDERS TO IMPOSE A SERVICE CHARGE FOR INSUFFICIENT FUNDS CHECKS; PROHIBITING A TITLE LENDER FROM HOLDING A TITLE FOR MORE THAN 30 CALENDAR DAYS WITHOUT PERFECTING THE TITLE LENDER’S SECURITY INTEREST; LIMITING CRIMINAL AND CIVIL REMEDIES OF TITLE LENDERS TO THOSE REMEDIES AVAILABLE UNDER THE MONTANA TITLE LOAN ACT; EXCLUDING TITLE LOANS FROM THE DEFINITION OF “CONSUMER LOANS”; REQUIRING A VIOLATION FOR CIVIL REMEDIES TO BE INTENTIONAL; AMENDING SECTIONS 31-1-802, 31-1-803, 31-1-811, 31-1-817, 31-1-825, 31-1-826, AND 32-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-802, MCA, is amended to read:

“31-1-802. Purpose — rules — scope — fees. (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of this part. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

(3) This part does not apply to ~~banks, savings and loan associations, credit unions, other state or federally regulated~~ financial institutions, *as defined in 32-8-502*, or pawnbrokers.

(4) This part may not be construed as affecting in any way the method of perfecting security interests on personal property provided for elsewhere in law.

(5) *Fees collected under this part must be deposited in an account in the state special revenue fund to be used by the department in carrying out its supervisory functions under this part.”*

Section 2. Section 31-1-803, MCA, is amended to read:

“31-1-803. Definitions. For the purposes of this part, the following definitions apply:

(1) “Borrower” means the owner of any titled personal property who pledges the property to a title lender pursuant to a title loan agreement.

(2) “Capital assets” means the assets of a person less the liabilities of that person. Assets and liabilities must be measured according to generally accepted accounting principles.

(3) “Certificate of title” means a state-issued certificate of title or certificate of ownership for personal property deposited with a title lender as security for a title loan pursuant to a title loan agreement.

(4) “Department” means the department of administration provided for in 2-15-1001.

(5) “Person” means an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, or other entity.

(6) “Pledged property” means personal property the ownership of which is evidenced and delineated by a state-issued certificate of title.

(7) “Title lender” means a person who has qualified to engage in the business of making title loans pursuant to this part and maintains at least one title loan office in this state.

(8) *“Title loan” means a loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property, with an original term of 30 days.*

~~(8)~~(9) “Title loan agreement” means a written agreement between a borrower and a title lender in a form that complies with the requirements of this part.

~~(9)~~(10) "Title loan office" means the location or premises where a title lender regularly conducts business.

~~(10)~~(11) "Titled personal property" means any personal property the ownership of which is evidenced and delineated by a state-issued certificate of title."

Section 3. Section 31-1-811, MCA, is amended to read:

"31-1-811. License revocation or suspension — penalty. (1) If the department finds, after notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that ~~a~~ *any person*, licensee, or ~~an~~ officer, agent, employee, or representative of the licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, or has furnished false information to the department, the department may *impose a civil penalty not to exceed \$1,000 for each violation and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee.*

(2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license."

Section 4. Section 31-1-817, MCA, is amended to read:

"31-1-817. Interest rates — fees charged. (1) The maximum rate of interest that a title lender shall contract for and must receive for making and carrying any title loan authorized by this part may not exceed:

(a) 25% for each 30-day period for the portion of a loan that does not exceed \$2,000;

(b) 18% for each 30-day period for the portion of a loan exceeding \$2,000 but not exceeding \$4,000; and

(c) a 10% percentage rate for each 30-day period, plus fees, on the portion of a loan that exceeds \$4,000.

(2) Title lenders may charge their actual costs of recording liens on borrowers' certificates of title.

(3) *Title lenders may charge a service charge, as provided in 27-1-717, if there are insufficient funds to pay a check on the date of presentment. Title lenders may not collect damages under 27-1-717(3) based upon the presentment of an insufficient funds check.*

Section 5. Section 31-1-825, MCA, is amended to read:

"31-1-825. Prohibited acts. (1) A title lender may not:

(a) accept a pledge from a person under 18 years of age;

(b) make any title loan agreement giving the title lender any recourse against the borrower other than the rights granted title lenders under this part;

(c) accept any waiver, in writing or otherwise, of any right or protection accorded a borrower pursuant to this part;

(d) fail to exercise reasonable care to protect from loss or damage certificates of title or titled personal property in the physical possession of the title lender;

(e) purchase titled personal property for personal use that was repossessed from the borrower by the title lender;

(f) enter into a title loan agreement unless the borrower presents clear title to the titled personal property at the time that the loan is made and the title is retained in the physical possession of the title lender;

(g) hold a title for more than 30 calendar days without perfecting the title lender's security interest;

~~(h)~~ (h) threaten to use or use a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of titled loans not generally available to creditors to collect on loans in default title lenders under this part;

~~(i)~~ (i) use any device or title loan agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part;

~~(j)~~ (j) engage in unfair, deceptive, or fraudulent practices in the making or collection of a title loan;

~~(k)~~ (k) knowingly violate any provision of or rule promulgated pursuant to this part; or

~~(l)~~ (l) include any of the following provisions in the title loan agreement:

(i) a hold harmless clause, provided that a title lender is not liable to the borrower or a third party for injuries to or damages sustained by the borrower or a third party as the result of an accident involving personal property to which the title lender holds the certificate of title;

(ii) a confession of judgment clause;

(iii) any assignment of or order for payment of wages or other compensation for services;

(iv) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(v) a waiver of any provision of this part.

(2) If a title lender enters into a transaction contrary to this section, any lien or security interest obtained by the title lender is void."

Section 6. Section 31-1-826, MCA, is amended to read:

"31-1-826. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom this part applies.

(2) Any *intentional* violation of this part constitutes an unfair or deceptive trade practice.

(3) A person found to have *intentionally* violated this part is liable to the consumer for actual and consequential damages, plus statutory damages of \$1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of this part.

(5) The consumer may bring a class action suit to enforce this part.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of this part."

Section 7. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include:

(i) loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f-7a; or

(ii) title loans provided for in Title 31, chapter 1, part 8.

(2) "Consumer loan business" means the business of making consumer loans as a licensee under this chapter.

(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(4) "License" means one or both of the licenses provided for by this chapter.

(5) "Licensee" means the person holding a license.

(6) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business."

Section 8. Effective date. [This act] is effective July 1, 2003.

Approved March 31, 2003

CHAPTER NO. 179

[SB 36]

AN ACT REQUIRING A DISTRICT COURT TO REQUIRE A WATER COMMISSIONER, UPON APPOINTMENT, TO OBTAIN WORKERS' COMPENSATION INSURANCE; CLARIFYING THAT THE OWNERS AND USERS OF DISTRIBUTED WATER, INCLUDING PERMITTEES AND CERTIFICATE HOLDERS, ARE RESPONSIBLE FOR PAYING A PROPORTIONATE SHARE OF WORKERS' COMPENSATION INSURANCE PURCHASED BY A WATER COMMISSIONER; PROVIDING THAT A WATER COMMISSIONER APPOINTED BY A DISTRICT COURT IS NOT AN EMPLOYEE OF THE JUDICIAL BRANCH, A LOCAL GOVERNMENT, OR A WATER USER; AMENDING SECTION 85-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-5-101, MCA, is amended to read:

"85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of ~~his~~ *the judge's* discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by

any certificates and permits issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, ~~in his discretion,~~ appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge of the district court may, upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source, appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may ~~make an order requiring~~ the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

(4) At the time of the appointment of a water commissioner or commissioners, the district court shall fix their compensation, *require a commissioner or commissioners to purchase a workers' compensation insurance policy and elect coverage on themselves,* and *require* the owners and users of the distributed waters, including permittees and certificate holders, ~~shall~~ to pay their proportionate share of fees and compensation, *including the cost of workers' compensation insurance purchased by a water commissioner or commissioners.* The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir ~~which that~~ is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district ~~wherein~~ *where* the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. ~~His~~ *A commissioner's* compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters the provisions of this chapter apply so long as they are consistent with this subsection.

(6) *A water commissioner appointed by a district court is not an employee of the judicial branch, a local government, or a water user.*

(7) *A water commissioner who fails to obtain workers' compensation insurance coverage required by subsection (4) is precluded from receiving benefits under Title 39, chapter 71 or 72, as a result of the performance of duties as a water commissioner."*

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to water commissioner appointments made on or after [the effective date of this act].

Approved March 31, 2003

CHAPTER NO. 180

[SB 70]

AN ACT REQUIRING THAT UNIVERSAL SYSTEM BENEFITS PROGRAMS MONEY DEPOSITED IN STATE SPECIAL REVENUE ACCOUNTS BE EXPENDED IN THE UTILITY SERVICE TERRITORY FROM WHICH THE MONEY WAS RECEIVED; REQUIRING THAT, IN ASSESSING UNIVERSAL SYSTEM BENEFITS PROGRAMS FUNDING NEEDS, THE DEPARTMENTS OF ENVIRONMENTAL QUALITY AND PUBLIC HEALTH AND HUMAN SERVICES SOLICIT UTILITY AND PUBLIC COMMENT FROM THE UTILITY SERVICE TERRITORY FROM WHICH THE MONEY WAS RECEIVED; AMENDING SECTION 69-8-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-412, MCA, is amended to read:

“69-8-412. Funds established — fund administrators designated — purpose of funds — department rulemaking authority to administer funds. (1) If, pursuant to 69-8-402(2)(f) or (5)(b), there is any positive difference between credits and the annual funding requirement, the department of revenue shall establish one or both of the following funds:

(a) a fund to provide for universal system benefits programs other than low-income energy assistance. The department of environmental quality shall administer this fund.

(b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(2) The purpose of these funds is to fund universal system benefits programs.

(3) *The department of environmental quality and the department of public health and human services shall expend the money in each representative fund on universal system benefits programs in the utility service territory from which the money was received.*

~~(3)(4)~~ (4) The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual ~~statewide funding assessment that identifies funding needs in universal system benefits programs~~ *assessment of identified funding needs in the utility service territory from which the money was received. In assessing the funding needs, the departments shall solicit utility and public comment from the utility service territory from which the money was received. The annual assessment must also take into account existing utility and large customer universal system benefits programs expenditures.*”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 31, 2003

CHAPTER NO. 181

[SB 117]

AN ACT PROVIDING THAT EXECUTIVE BRANCH AGENCY POLICIES, REGULATIONS, STANDARDS, AND STATEMENTS CONCERNING THE INTERNAL MANAGEMENT OF STATE GOVERNMENT AND NOT AFFECTING PRIVATE RIGHTS OR PROCEDURES AVAILABLE TO THE PUBLIC DO NOT CONSTITUTE RULES FOR PURPOSES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTION 2-4-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-102, MCA, is amended to read:

“2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) “Administrative rule review committee” or “committee” means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) “Agency” means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) “ARM” means the Administrative Rules of Montana.

(4) “Contested case” means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) “Interested person” means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency’s list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

(b) ~~but~~ The term does not include:

~~(a)~~(i) statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

~~(b)~~(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

~~(c)~~(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

~~(d)~~(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals; or

~~(e)~~ rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

~~(f)~~(v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

(13) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law.”

Approved March 31, 2003

CHAPTER NO. 182

[SB 128]

AN ACT AUTHORIZING THE DEPARTMENT OF JUSTICE TO ESTABLISH FEES FOR THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION; PROVIDING FOR THE DEPOSIT AND USE OF THE FEES; CREATING AN EXCEPTION TO BUDGET AMENDMENT REQUIREMENTS TO ALLOW THE DEPARTMENT OF JUSTICE TO INCUR PERSONAL SERVICES COSTS AND OPERATIONAL COSTS IN CONNECTION WITH THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION; AMENDING SECTION 17-7-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Criminal history record information account. (1) There is a criminal history record information account in the state special revenue fund. Money collected pursuant to [section 2] must be deposited in the account.

(2) The account must be used by the department of justice for the dissemination of criminal history record information.

Section 2. Use of criminal history record information account — staffing — funding. (1) The department of justice may establish fees for the dissemination of criminal history record information. Revenue from the fees must be deposited in the account provided for in [section 1].

(2) The money in the account provided for in [section 1] must be used by the department of justice to pay for the costs associated with the dissemination of criminal history record information.

(3) The costs associated with the dissemination of criminal history record information include adequate staffing to provide for the dissemination service. The department of justice may add staff or incur operational costs, or both, pursuant to 17-7-402. The authority to add staff or incur operational costs must be based on the following:

(a) an additional 5,000 criminal history record information requests, above the number received in 2001, must be received and must involve fingerprint processing; or

(b) an additional 7,500 criminal history record information requests, above the number received in 2001, must be received and must involve screening.

Section 3. Section 17-7-402, MCA, is amended to read:

“17-7-402. Budget amendment requirements. (1) Except as provided in subsection (7), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue;

(ii) additional tuition collected by the Montana university system;

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies;

(iv) Montana historical society enterprise revenue resulting from sales to the public;

(v) additional revenue that is deposited in funds other than the general fund and that is from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91;

(vi) revenue resulting from the sale of goods produced or manufactured by the industries program of an institution within the department of corrections;~~or~~

(vii) revenue collected for the administration of the state grain laboratory under the provisions of Title 80, chapter 4, part 7; *or*

(viii) *revenue generated from fees collected by the department of justice for dissemination of criminal history record information pursuant to Title 44, chapter 5, part 3;*

(b) by the approving authority if the budget amendment contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority for the expenditure of money in the state special revenue fund unless:

(i) an emergency justifies the expenditure;

(ii) *the expenditure is authorized under subsection (1)(a); or*

(iii) the expenditure is exempt under subsection (5);

(d) by the approving authority unless it will provide additional services;

(e) by the approving authority for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter, except when the legislative finance committee is given specific notice by the approving authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law, have occurred since the matter was raised with or presented for consideration by the legislature; *or*

(f) to extend beyond June 30 of the last year of any biennium, except that budget amendments for federal funds may extend to the end of the federal fiscal year.

(2) A general fund loan made pursuant to 17-2-107 does not constitute a significant ascertainable commitment of present general fund support.

(3) Subject to subsection (1)(f), all budget amendments must itemize planned expenditures by fiscal year.

(4) Each budget amendment must be submitted by the approving authority to the budget director and the legislative fiscal analyst.

(5) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is exempt from the requirements of this part.

(6) An appropriation for a nonrecurring item that would usually be the subject of a budget amendment must be submitted to the legislature for approval during a legislative session between January 1 and the senate hearing on the budget amendment bill. The bill may include authority to spend money in the current fiscal year and in both fiscal years of the next biennium.

(7) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 44, chapter 5, part 3, and the provisions of Title 44, chapter 5, part 3, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 31, 2003

CHAPTER NO. 183

[SB 131]

AN ACT CREATING AN INTERMEDIARY RELENDING PROGRAM WITHIN THE BOARD OF INVESTMENTS; REQUIRING THAT LOAN PROCEEDS BE USED AS MATCHING FUNDS FOR UNITED STATES DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT LOAN PROGRAMS AND OTHER FEDERAL PROGRAMS; PROVIDING TERMS FOR INTEREST RATES AND REPAYMENT; ALLOWING THE BOARD TO PURCHASE A PORTION OF SEASONED LOANS FROM A LOCAL ECONOMIC DEVELOPMENT ORGANIZATION'S REVOLVING LOAN PROGRAM; AMENDING SECTION 17-6-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Intermediary relending program. (1) The board may set aside an amount, not to exceed \$5 million, from the in-state investment percentage provided for in 17-6-305 for the purpose of creating an intermediary relending program.

(2) Intermediary loans may be made to board-approved local economic development organizations with revolving loan programs.

(3) Each intermediary loan made pursuant to subsection (2) may not exceed \$500,000.

(4) An intermediary loan made under this section may be offered only to an applicant that will pledge and use the loan funds as matching funds for the U.S. department of agriculture rural development loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but not limited to programs from the economic development administration of the U.S. department of commerce and the community development financial institution program from the U.S. department of the treasury.

Section 2. Interest rates and repayment of intermediary loan — terms. (1) The interest rate on an intermediary loan made pursuant to [section 1] may not exceed 2% a year for a period of 30 years.

(2) For the first 3 years, repayment on the intermediary loan is of the interest only, and for the remainder of the term of the intermediary loan, the repayment is principal and interest.

Section 3. Purchase of seasoned or mature loans by board. The board may purchase a portion of a seasoned or mature loan from a local economic development organization's revolving loan program.

Section 4. Section 17-6-302, MCA, is amended to read:

"17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(6) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(7) *"Intermediary loan" means a loan provided to a local economic development organization with a revolving loan fund to be used to provide matching funds for the U.S. department of agriculture rural development loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but not limited to programs from the economic development administration of the U.S. department of commerce and the community development financial institution program from the U.S. department of the treasury.*

~~(7)~~(8) "Loan participation" means loans or portions of loans bought from a financial institution and does not include the purchase of debentures issued by a capital company.

(9) "Local economic development organization" means:

(a) (i) *a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);*

(ii) *an entity certified by the department under 90-1-116; or*

(iii) *an entity established by a local government; and*

(b) *an entity actively engaged in economic development and business assistance work in the area.*

~~(8)~~(10) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana.

~~(9)~~(11) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenue in the future to the people of Montana, either directly or indirectly.

~~(10)~~(12) "Montana economy" means any business ~~activity~~ activities in the state of Montana, including those that continue existing jobs or create new jobs in Montana.

~~(11)~~(13) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [sections 1 through 3].

Section 6. Effective date. [This act] is effective July 1, 2003.

Approved March 31, 2003

CHAPTER NO. 184

[SB 132]

AN ACT PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION TO IMPLEMENT THE 9-1-1 STATEWIDE EMERGENCY TELEPHONE SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Rulemaking authority. The department may adopt rules to implement the provisions of this chapter. The rules may include but are not limited to:

- (1) establishing procedures to evaluate and make determinations on requests for a variation of the basic or enhanced 9-1-1 service;
- (2) establishing evaluation criteria for basic and enhanced 9-1-1 systems plans;
- (3) establishing requirements for program participation by public and private safety agencies;
- (4) establishing guidelines for the distribution of funds; and
- (5) specifying reporting requirements.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 10, chapter 4, part 1, and the provisions of Title 10, chapter 4, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 31, 2003

CHAPTER NO. 185

[SB 160]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEVELOP STRATEGIC PLANS; REQUIRING THE STRATEGIC PLAN TO CONTAIN PERFORMANCE MEASURES; DESCRIBING CRITERIA FOR PERFORMANCE MEASURES; DESCRIBING REQUIREMENTS FOR DATA COLLECTION AND REPORTING; ALLOWING THE LEGISLATIVE AUDIT DIVISION TO PROVIDE CERTAIN INFORMATION; OUTLINING LEGISLATIVE AND AGENCY USE OF PERFORMANCE MEASURES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 6], the following definitions apply:

- (1) "Agency" means a division of the department of public health and human services.
- (2) "Department" means the department of public health and human services provided for in 2-15-2201.
- (3) "Outcome measure" means a quantifiable indicator of the public and customer benefits derived from actions by the department and its agencies.
- (4) "Output measure" means a quantifiable indicator of the number of goods or services that the department or an agency produces.
- (5) "Performance measures" means monitoring tools included in the department's or an agency's strategic plan that are intended to help guide government and make it accountable.
- (6) "Strategic plan" means a planning document, covering up to 5 years, that contains the mission, goals, and objectives that the department or an agency intends to accomplish and the performance measures that will track success in meeting missions, goals, and objectives.

Section 2. Policy — performance measures. (1) It is the policy of the legislature that the department shall adopt comprehensive accountability systems. As part of the accountability systems, the department shall develop strategic plans.

(2) The performance measures included in a strategic plan must indicate how progress toward the department's or an agency's goals and objectives is succeeding. Performance measures are intended to focus department or agency efforts in implementing legislative intent, prioritizing goals and objectives, and allocating resources. Performance measures must focus on key processes. Each measure must be central to the success of the process being measured. The performance measures must be designed to provide information that is meaningful and that is useful to decisionmakers.

Section 3. Criteria for measurement system. (1) The department's system of performance measures must satisfy the following criteria:

- (a) The system must be result-oriented, focusing on outcome measures and output measures.
- (b) The system must be selective, concentrating on the most important indicators of performance.

(c) The system must be useful, providing information that is of value to the department, the agency, and decisionmakers.

(d) The system must be accessible and must provide periodic information concerning results.

(e) The system must be reliable, providing accurate and consistent information.

(2) Unless otherwise provided by law, performance measures must be developed and revised as part of the strategic planning process in even-numbered years. The performance measures should not be designed to report every department or agency activity but must measure key processes and activities.

Section 4. System requirements — input from legislative audit division. All systems described in [section 3(1)] that support performance measure data collection must have effective controls that provide reasonable assurance that the information is properly collected and accurately reported. If directed by the legislative audit committee, the legislative audit division may provide information concerning the accuracy of data collection and reporting.

Section 5. Legislative use of performance measures. (1) During an interim, the department shall report performance data to the appropriate interim committee as provided for in Title 5, chapter 5, part 2, and to the office of budget and program planning. Interim committees shall use performance data in reviewing the department's strategic planning documents as they relate to prospective legislation.

(2) When reviewing the strategies of department or agency management in implementing programs authorized by the legislature, the committees may provide input on:

(a) the direct effects of each strategy on department and agency customers;

(b) the information that management needs to track progress toward achieving key goals and objectives;

(c) the performance measures that best reflect the expenditure of the department and the agencies' budgets; and

(d) whether the performance measures clearly relate to the department's and the agencies' missions, goals, objectives, and strategic plan.

Section 6. Department and agency use of performance measures. Department and agency managers shall use performance measures as an integral part of their strategic and operational management for the department or an agency. Performance measures must be derived from the department's or an agency's mission, goals, objectives, and strategies with an emphasis on serving the department's or an agency's customers. In the review in even-numbered years, the department and its agencies shall assess and propose changes needed to make certain that existing performance measures relate logically to other elements of the strategic plan and provide a focus on serving customers.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 2, chapter 15, part 22, and the provisions of Title 2, chapter 15, part 22, apply to [sections 1 through 6].

Section 8. Effective date. [This act] is effective July 1, 2003.

Approved March 31, 2003

CHAPTER NO. 186

[SB 172]

AN ACT PROVIDING THAT A FINANCIAL INSTITUTION THAT ENTERS INTO AN AGREEMENT TO SHARE OR OPERATE ELECTRONIC TERMINALS DOES NOT FORFEIT ITS RIGHTS UNDER FEDERAL OR STATE LAW TO CHARGE CUSTOMERS FEES OR WAIVE ITS OTHER RIGHTS OR OBLIGATIONS THAT EXIST UNDER STATE LAW; AMENDING SECTION 32-6-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-6-104, MCA, is amended to read:

“32-6-104. Consumer information — charge for use of electronic terminal. (1) A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers, provide the customer with an itemized statement clearly setting forth, without limitation:

(a) the specific transactions that may be performed through satellite terminals;

(b) the charges, if any, for individual transactions made through a satellite terminal;

(c) minimum balance requirements, if any;

(d) the liability of the various parties for unauthorized transactions made by electronic funds transfer, with special emphasis upon the liability when the customer makes a personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon the importance of immediate notification to the institution of theft or loss;

(e) the legal status of receipts issued from a satellite terminal;

(f) the right of the customer to a description of transactions performed by satellite terminal on any periodic statement of account furnished the customer;

(g) the right of the customer to seek correction of an error that the customer believes has been made in the customer's account by electronic funds transfer;

(h) instructions in maintaining customer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

(i) the economic significance of having no “float” time and no stop-payment authority.

(2) The customer shall ~~then~~ sign a statement acknowledging acceptance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the financial institution, must be provided to the customer. In addition, the information set forth in subsection (1)(d) must be specifically acknowledged by the customer. The customer shall verify acknowledgement by signing the customer's initials immediately adjacent to the information provided.

(3) (a) The owner of an electronic terminal may impose a surcharge for the use of its electronic terminal. The owner of an electronic terminal that elects to impose a surcharge for the use of its electronic terminal shall clearly advise the user of the electronic terminal, by a conspicuous disclosure on the terminal or

through a message displayed on the electronic terminal screen, of the exact amount of the surcharge. The user must then be provided the option either to cancel the transaction, without incurring the surcharge, or to complete the transaction subject to the surcharge.

(b) An agreement by a financial institution to share or operate electronic terminals may not prohibit, limit, or restrict the right of the financial institution to charge a customer any fees allowed by state or federal law or to require a financial institution to waive any other rights or obligations it has under the laws of this state.

(4) A merchant or person other than a financial institution that issues a unique identification device to its customers for use at a point-of-sale terminal and that provides to the holders of the unique identification device a disclosure that satisfies the initial disclosures of terms and conditions under Regulation E of the federal Electronic Fund Transfer Act is considered to be in compliance with the disclosure requirements of this section.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 31, 2003

CHAPTER NO. 187

[SB 173]

AN ACT MODIFYING THE PROCESS FOR DETERMINING THE DEFINITION OF “SERVICE AREA” FOR FEDERAL UNIVERSAL SERVICE SUPPORT FOR RURAL TELEPHONE COMPANIES; AMENDING SECTION 69-3-840, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-840, MCA, is amended to read:

“69-3-840. Determination of eligible carrier status — universal service support. (1) The commission is authorized to designate telecommunications carriers as eligible for federal universal service support, in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254, and for any Montana universal service funds. This authorization applies to all telecommunications carriers notwithstanding the carrier’s exemption from further regulation by the commission.

(2) Upon the petition of a telecommunications carrier, or upon its own motion, the commission shall designate a telecommunications carrier that meets the requirements of 47 U.S.C. 214(e)(1) as an eligible telecommunications carrier for a service area designated by the commission. In the case of an area served by a rural telephone company, the term “service area” means the company’s “study area” for federal universal service support unless the federal communications commission *and the commission, after taking into account recommendations of a federal-state joint board instituted under 47 U.S.C. 410(c), establishes* establish a different definition of service area for the company. The term “service area” for all other telecommunications carriers means a geographic area, such as a census block or grid block, as established by the commission for the purpose of determining federal universal service obligations and support mechanisms.

(3) Upon receiving a petition from a telecommunications carrier and consistent with the public interest, convenience, and necessity, the commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one telecommunications carrier for a service area, so long as each additional requesting telecommunications carrier meets the requirements of 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the commission shall find that the designation is in the public interest.

(4) If no telecommunications carrier will provide the services that are supported by universal service support mechanisms under 47 U.S.C. 254(c) to all or a part of an unserved community that requests service, the commission shall determine which telecommunications carrier is best able to provide the service to the requesting unserved community. Any telecommunications carrier ordered to provide service under this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be designated as an eligible telecommunications carrier for that community or the unserved portion of the community.

(5) The commission shall permit an eligible telecommunications carrier to relinquish its designation as an eligible *telecommunications* carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier to ensure that all customers served by the relinquishing carrier will continue to be served and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The commission shall establish a time, not to exceed 1 year after the commission approves relinquishment under this section, within which the purchase or construction must be completed.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 31, 2003

CHAPTER NO. 188

[SB 238]

AN ACT CLARIFYING THAT A YOUTH WHO HAS COMMITTED A STATUS OFFENSE MAY NOT BE PLACED IN SECURE DETENTION BY BECOMING A DELINQUENT YOUTH BY VIRTUE OF A PROBATION VIOLATION IN ORDER TO COMPLY WITH FEDERAL LAW; AMENDING SECTION 41-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-103, MCA, is amended to read:

“41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

- (1) “Adult” means an individual who is 18 years of age or older.
- (2) “Agency” means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.
- (3) “Assessment officer” means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.
- (4) “Commit” means to transfer legal custody of a youth to the department or to the youth court.
- (5) “Correctional facility” means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.
- (6) “Cost containment funds” means funds retained by the department under 41-5-132 for distribution by the cost containment review panel.
- (7) “Cost containment review panel” means the panel established in 41-5-131.
- (8) “Court”, when used without further qualification, means the youth court of the district court.
- (9) “Criminally convicted youth” means a youth who has been convicted in a district court pursuant to 41-5-206.
- (10) “Custodian” means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.
- (11) “Delinquent youth” means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:
 - (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or
 - (b) who has been placed on probation as a delinquent youth ~~or a youth in need of intervention~~ and who has violated any condition of probation.
- (12) “Department” means the department of corrections provided for in 2-15-2301.
- (13) “Department records” means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1512(1)(c) or 41-5-1513(1)(b) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services’ management information system.
- (14) “Detention” means the holding or temporary placement of a youth in the youth’s home under home arrest or in a facility other than the youth’s own home for:
 - (a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth’s case;
 - (b) contempt of court or violation of a valid court order; or
 - (c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(20) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(21) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(22) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(23) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(24) "Judge", when used without further qualification, means the judge of the youth court.

(25) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(26) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(27) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(28) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(29) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention. The term does not include shelter care or emergency placement of less than 45 days.

(30) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(31) "Probable cause hearing" means the hearing provided for in 41-5-332.

(32) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(33) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(34) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(35) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(36) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(37) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(38) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(39) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(40) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(41) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(42) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (42)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(43) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(44) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

(45) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(46) "Youth care facility" has the meaning provided in 52-2-602.

(47) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, probation officers, and assessment officers.

(48) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

(49) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(50) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

~~(a)~~(i) violates any Montana municipal or state law regarding alcoholic beverages; or

~~(b)~~(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

~~(c)~~(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 31, 2003

CHAPTER NO. 189

[SB 257]

AN ACT REQUIRING ADDITIONAL NOTICE OF TIME DEADLINES TO THE COURT IN CHILD ABUSE AND NEGLECT PROCEEDINGS; AND AMENDING SECTIONS 41-3-422 AND 41-3-432, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions — burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) termination of the parent-child legal relationship, as provided in 41-3-607;

(v) appointment of a guardian pursuant to 41-3-444;

(vi) a determination that preservation or reunification services need not be provided; or

(vii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vi) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody; or

(iii) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of all petitions at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the

petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group conference, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) Orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws.”

Section 2. Section 41-3-432, MCA, is amended to read:

“41-3-432. Show cause hearing — order. (1) (a) A show cause hearing must be conducted within 10 days, excluding weekends and holidays, of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. *A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.*

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties’ rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child’s best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child’s home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Approved March 31, 2003

CHAPTER NO. 190

[HB 182]

AN ACT GENERALLY REVISING OUTDATED REFERENCES PERTAINING TO THE DEPARTMENT OF COMMERCE FOLLOWING ITS 2001 REORGANIZATION; CHANGING THE RESPONSIBILITY FOR MONUMENTATION AND RELATED SURVEY REQUIREMENTS TO THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS; REVISING RULEMAKING AUTHORITY FOR THE OFFICE OF ECONOMIC DEVELOPMENT; AMENDING SECTIONS 2-15-150, 23-5-631, 30-16-303, 50-60-313, 53-2-1203, 76-3-403, AND 90-1-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-150, MCA, is amended to read:

"2-15-150. (Temporary) Lewis and Clark bicentennial commission — membership — purpose — account. (1) There is a Lewis and Clark bicentennial commission.

(2) The commission consists of 12 members, as follows:

(a) nine members who must be appointed by the governor, at least three of whom must be enrolled members of a Montana Indian tribe and live on a

Montana Indian reservation, who shall serve 3-year staggered terms, who shall represent Montana's different geographical areas, and who must have an interest in the history of the Lewis and Clark expedition;

(b) the director of the Montana historical society, established in 22-3-101;

(c) the administrator of the parks division within the department of fish, wildlife, and parks, established in 2-15-3401; and

(d) the ~~director of travel Montana~~ *administrator of the Montana promotions division within the department of commerce, established in 2-15-1801.*

(3) The commission is responsible for coordinating and promoting observance of Montana's bicentennial commemoration of the Lewis and Clark expedition and the importance of the roles played by Montana's Indian people to the Lewis and Clark expedition. The commission may:

(a) cooperate with national, regional, statewide, and local events promoting the bicentennial;

(b) plan and coordinate or assist in planning and coordinating bicentennial events;

(c) engage in fundraising activities, including revenue-earning enterprises and the solicitation of grants, gifts, and donations;

(d) promote public education concerning the Lewis and Clark expedition and the history and culture of Montana's Indian people at the time of the Lewis and Clark expedition; and

(e) perform other related duties.

(4) (a) The Lewis and Clark bicentennial commission is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$3 million, payable over a term not to exceed 6 years, for the purposes identified in subsection (3).

(b) The Lewis and Clark bicentennial commission shall pledge to the repayment of any indebtedness the proceeds from the sale of Lewis and Clark bicentennial license plates as provided in 2-15-151.

(c) The proceeds of any loan from the board of investments to the Lewis and Clark bicentennial commission must be deposited in the account established in subsection (5).

(5) There is a Montana Lewis and Clark bicentennial account. Money in the account may include money from revenue-earning enterprises, grants, gifts, or donations, money appropriated by the legislature, and interest earned on the account. Account funds must be used for the purposes described in this section.

(6) The commission is attached to the Montana historical society for administrative purposes only as provided in 2-15-121. (Subsections (1) through (3), (5), and (6) terminate December 31, 2007—sec. 2, Ch. 428, L. 1997; subsection (4) terminates December 31, 2006—sec. 17, Ch. 414, L. 2001.)”

Section 2. Section 23-5-631, MCA, is amended to read:

“23-5-631. Examination and approval of new video gambling machines and associated equipment — fee. (1) The department shall examine and may approve a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment that is manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used. A licensed

manufacturer or distributor may bring a video gambling machine or associated equipment authorized by this chapter into the state for research and development on behalf of a licensed manufacturer prior to submission of the machine or equipment to the department for approval.

(2) A video gambling machine or associated equipment or a modification to an approved machine or associated equipment may not be examined or approved by the department until the video gambling machine manufacturer is licensed as required in 23-5-625.

(3) All video gambling machines or associated equipment approved by the ~~department of commerce~~ state prior to October 1, 1989, must be considered approved under this part.

(4) The department shall require the manufacturer seeking the examination and approval of a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(5) Payments received under subsection (4) are statutorily appropriated to the department, as provided in 17-7-502, to defray the costs of examining and approving video gambling machines and associated equipment and modifications to approved machines and associated equipment and to issue refunds for overpayments.

(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine or associated equipment or a modification to an approved machine or associated equipment prior to its distribution and placement for play by the public. A manufacturer, distributor, or route operator may not supply a video gambling machine or associated equipment to a manufacturer, distributor, route operator, or operator unless the machine or equipment has been approved by the department."

Section 3. Section 30-16-303, MCA, is amended to read:

"30-16-303. Participation of state agencies. (1) The legislature directs full participation in the implementation of this chapter by:

(a) the departments of agriculture, ~~commerce~~, environmental quality, revenue, justice, labor and industry, and public health and human services;

(b) the secretary of state;

(c) the public service commission; and

(d) other agencies as directed by the governor.

(2) The board of review may include licenses not specified in 30-16-301 in a plan for streamlined registration and licensing if:

(a) the agency administering the license requests that the license be included in the plan;

(b) the board of review approves including the license by a majority vote of a quorum of the board of review; and

(c) licensees affected by the license's inclusion in the plan are given 60 days' notice of the plan's implementation and the notice sets forth in detail the changes in the licensing procedures.

(3) If a license is included in a streamlined registration and licensing plan pursuant to subsection (2):

(a) the agency administering the license may provide for a variance in the timing of the payment of the license fee and a variance in the application form, filing date, and penalty provisions in order to conform with the plan's criteria;

(b) the board of review shall provide for the equitable proration to the agency administering the license of any fees paid by a licensee prior to the plan's implementation; and

(c) the license must be processed and issued by the department of revenue as provided in this chapter.

(4) (a) In order to defray the costs associated with administering a streamlined registration and licensing plan, the department may require a transfer of funds from the participating agencies in an amount equal to no more than one-half of the total cost of processing and issuing a license.

(b) The amount remaining of the total cost of processing and issuing a license may be charged to the license applicant.

(c) The amount of funds transferred by an agency must be based on the number of licenses processed and issued on behalf of that agency versus the total number of licenses processed and issued under the streamlined registration and licensing plan."

Section 4. Section 50-60-313, MCA, is amended to read:

"50-60-313. Petition for designation of county jurisdictional area and adoption of building code. (1) A county jurisdictional area and a building code applicable to that area may be adopted by petition as provided in this section.

(2) A petition may be circulated by the record owner of real property to which the county jurisdictional area will be applied or extended for the purpose of gathering signatures on the petition. Only a record owner of real estate within the proposed county jurisdictional area is qualified to sign a petition.

(3) A petition to designate a county jurisdictional area may also be circulated by the board of county commissioners. A petition circulated by the board of county commissioners is not subject to the requirements of 50-60-310.

(4) Before a petition may be circulated for signatures, the language of the proposed building code must be approved by the department of labor and industry and the form of the petition must be approved by the election administrator of the county in which the real property is located. A building code proposed pursuant to this section must be approved by the department of ~~commerce~~ *labor and industry* if it meets the criteria provided in 50-60-302 for the approval of a code within a code enforcement program. The election administrator shall approve the form of the petition if the petition meets, ~~and the election administrator shall comply with,~~ the requirements of 7-5-134, 7-5-135, and this section, *and the election administrator shall comply with those requirements*, except that:

(a) the number of valid signatures required for the creation or extension of the county jurisdictional area is a majority of the record owners of real property located within the proposed jurisdictional area; and

(b) a petition containing the number of valid signatures required by this section is not submitted to a vote by electors.

(5) An individual circulating a petition for signatures ~~must~~ *shall* make available to individuals who may sign the petition a copy of the building code approved by the department of labor and industry and a map showing the county jurisdictional area within which the code will apply. The petition must clearly indicate that the individual signing the petition read and understood the provisions of the code and understood the geographic area in which the code would be applied.

(6) The county jurisdictional area and the building code applicable to that area become effective 60 days after the determination by the county election administrator that the petition has been signed by the number of record owners of real property required by this section.

(7) (a) Except as provided in this subsection, once adopted by petition as provided in this section, a county building code may not be amended except by petition in accordance with this section or by submitting the modification to the electors as provided in 50-60-312.

(b) A county building code adopted by petition may be modified without petition or election if:

(i) the modification consists of a provision taken from a uniform or model building code; and

(ii) the provision does not regulate a wholly new component of a structure, such as wiring, plumbing, or concrete foundation, that was previously unregulated.”

Section 5. Section 53-2-1203, MCA, is amended to read:

“53-2-1203. State workforce investment board — membership — duties. (1) There is a state workforce investment board.

(2) The state board consists of:

(a) the governor or a person designated by the governor to act on behalf of the governor;

(b) two members of the house of representatives, each from a different political party, and two members of the senate, each from a different political party, appointed by the presiding officer of each respective chamber; and

(c) individuals appointed by the governor, including:

(i) representatives of businesses located in Montana who:

(A) are owners of businesses, chief executive or operating officers, and other business executives or employers with optimum policymaking or hiring authority, including business members of local boards; and

(B) represent businesses with employment opportunities that reflect the employment opportunities in Montana;

(ii) chief elected officials of local government;

(iii) representatives of labor organizations;

(iv) representatives of individuals and organizations who have experience with respect to youth activities;

(v) representatives of individuals and organizations who have experience and expertise in the delivery of workforce investment activities;

(vi) representatives of the state agencies who are responsible for the programs and activities that are carried out by the one-stop centers, including but not limited to:

- ~~(A) the department of commerce;~~
- ~~(B)~~(A) the department of labor and industry;
- ~~(C)~~(B) the department of public health and human services;
- ~~(D)~~(C) the office of the commissioner of higher education; and
- ~~(E)~~(D) the office of public instruction; and
- (vii) other representatives that the governor may designate.

(3) The selection and appointment of members of the state board must follow the nominating provisions of section 111 of the Act (29 U.S.C. 2821).

(4) The governor shall appoint enough individuals described in subsection (2)(c)(i) so that those persons compose a majority of the membership of the state board.

(5) The governor shall consider the special needs of Montana's hard-to-serve Indian population and the state's relationship with tribal governments when making appointments to the state board.

(6) The state board shall perform the functions described in section 111 of the Act (29 U.S.C. 2821)."

Section 6. Section 76-3-403, MCA, is amended to read:

"76-3-403. Monumentation. (1) ~~The department of labor and industry board of professional engineers and professional land surveyors~~ shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It is the responsibility of the governing body to require the replacement of all monuments removed in the course of construction."

Section 7. Section 90-1-114, MCA, is amended to read:

"90-1-114. Rulemaking authority. (1) The office of economic development ~~shall~~ may adopt rules to implement the provisions of 2-15-218, 2-15-219, 90-1-112, 90-1-113, and this section. The rules must include but are not limited to:

- (a) criteria for providing assistance to communities; and
- (b) coordinating economic development efforts among other state agencies, Montana tribal governments, private enterprise, federal agencies, and local governments.

(2) The office may adopt rules necessary to administer the duties and responsibilities of the office."

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2003

CHAPTER NO. 191

[HB 252]

AN ACT CLARIFYING THE APPLICATION OF CAMPAIGN LAWS TO SCHOOL DISTRICTS AND SPECIAL DISTRICTS; EXPANDING THE DEFINITION OF "SPECIAL DISTRICT"; AND AMENDING SECTION 13-37-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-206, MCA, is amended to read:

"13-37-206. Exception for certain school districts and certain special districts. (1) The provisions of this part, except 13-37-217, do not apply to candidates for the office of trustee of a school district, their political ~~committees~~ *campaigns*, and political committees organized to support or oppose a school district issue when the school district is:

- (a) a first-class district located in a county having a population of less than 15,000;
- (b) a second- or third-class district; or
- (c) a county high school district having a student enrollment of less than 2,000.

(2) The provisions of this part, except 13-37-217, do not apply to candidates for certain special district offices, their political ~~committees~~ *campaigns*, and political committees organized to support or oppose a special district issue. ~~when the special district~~

(3) *As used in this section, "special district" means a unit of local government authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to is a conservation district, a weed management district, a fire district, a community college district, a hospital district, an irrigation district, a sewer district, a transportation district, or a water district. The term also includes any district or other entity formed by interlocal agreement."*

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Approved April 1, 2003

CHAPTER NO. 192

[SB 83]

AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH A DESIGN-BUILD CONTRACTING PILOT PROGRAM; SETTING A CAP ON THE TOTAL COST OF PROJECTS THAT MAY BE AUTHORIZED UNDER THE PROGRAM; REQUIRING THE DEPARTMENT TO REPORT ON THE PROGRAM TO THE GOVERNOR AND THE 2009 LEGISLATURE; CREATING A DESIGN-BUILD CONTRACTING BOARD; PROVIDING THE PROCEDURE FOR PROSPECTIVE CONTRACTORS TO SUBMIT A PROPOSAL; AMENDING SECTIONS 18-8-204, 18-8-205,

60-2-111, AND 60-2-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, nationally, the concept of a single contract incorporating both the design and construction elements of highway construction has produced numerous examples of time savings in development of projects and delivery of completed projects without sacrificing quality; and

WHEREAS, the Legislature recognizes the impact that highway construction activities have on the state's economy and recognizes design-build contracting on a limited basis as a viable adjunct to, not a replacement for, the existing highway contracting process; and

WHEREAS, a pilot program to allow the Department of Transportation and the Transportation Commission the opportunity to use a design-build concept in highway contracting in select instances is an appropriate way to test the concept's efficiency in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of 18-8-204, 18-8-205, 60-2-111, 60-2-112, and [sections 1 through 4], the following definitions apply:

(1) "Design-build contracting" means the process of entering into a single contract between the commission and a design-build contractor in which the design-build contractor agrees to design and build a highway, structure, or facility or any other items required in a request for proposals.

(2) "Design-build contractor" means an individual, partnership, corporation, joint venture, or other legally recognized entity that is appropriately licensed in Montana and that provides the necessary design and construction services, including contract administration.

(3) "Design-build criteria package" means the document provided by the department that contains the information necessary to guide a prospective design-build contractor in the preparation and submission of a proposal for a design-build project.

(4) "Request for proposals" means a part of the design-build criteria package that contains a detailed scope of work, including design concepts, technical requirements and specifications, the time allowed for design and construction, the department's estimated cost of the project, the deadline for submitting a proposal, the selection criteria, and a copy of the contract.

(5) "Request for qualifications" means a part of the design-build criteria package that contains the desired minimum qualifications of the design-build contractor, a scope of work statement, the project requirements, the amount of reimbursement that the commission has determined will be paid to prospective design-build contractors who qualify for the short list but are not awarded a contract, and the selection criteria that the department will use in compiling the short list of prospective design-build contractors to consider.

Section 2. Design-build contracting authorized — limit on projects — reporting requirement. (1) Beginning on [the effective date of this act] through December 31, 2008, the commission and the department are authorized to establish and implement a design-build contracting pilot program for highway construction.

(2) The total cost of projects that the commission and the department authorize under the design-build contracting pilot program may not exceed \$20 million.

(3) The department shall provide a report to the governor and the 61st legislature. The report must contain a benefit analysis of design-build contracting in comparison to the contracting process authorized in 60-2-111. The department shall also report to the governor and the revenue and transportation interim committee, upon request, to provide updates on the design-build contracting pilot program.

Section 3. Design-build contracting board — duties. (1) The director shall appoint a design-build contracting board. The duties of the board include but are not limited to:

(a) establishing the criteria by which eligible projects are selected for a design-build contract;

(b) assisting the department in making recommendations to the commission regarding the terms, conditions, and processes by which a design-build contract is advertised, proposals are evaluated and selected, and contracts are entered into and executed; and

(c) providing a review of the costs and benefits of design-build contracting that will be included in a report to the 2009 legislature.

(2) The design-build contracting board consists of the following members:

(a) two representatives of the highway construction industry in Montana;

(b) two representatives of the highway design and engineering industry doing business in Montana;

(c) a representative of the Montana office of the federal highway administration;

(d) two representatives of the department;

(e) a representative of the bonding and surety industry authorized to operate in Montana; and

(f) the director, who serves as presiding officer of the board.

Section 4. Design-build contracting process — submission of proposals — department's duties. (1) In accordance with recommendations of the design-build contracting board, once the department has identified a project for which the design-build contracting process will be used, the department shall prepare and advertise a request for qualifications.

(2) From the responders to the request for qualifications, the department shall prepare a short list of the responders that it believes are most qualified, not to exceed five responders on any single project.

(3) (a) The department shall announce the short list and issue a request for proposals to each of the prospective design-build contractors on the short list, who may then submit a technical proposal to the department.

(b) A technical proposal submitted in response to a request for proposals must contain detailed descriptions of the prospective design-build contractor's approach to designing, constructing, and managing the project in accordance with the design-build criteria package. The technical proposal must also include the prospective design-build contractor's conceptual design and construction sequence and schedule.

(4) The department shall evaluate the technical proposals and make a written recommendation to the commission regarding the department's selection of the design-build contractor to be awarded the contract.

(5) The prospective design-build contractors who appeared on the department's short list but are not awarded the contract may be paid a stipend, in an amount determined by the commission, for costs incurred in submitting the response to the department's request for proposals.

Section 5. Section 18-8-204, MCA, is amended to read:

"18-8-204. Procedures for selection. (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

- (i) the qualifications of professional personnel to be assigned to the project;
- (ii) capability to meet time and project budget requirements;
- (iii) location;
- (iv) present and projected workloads;
- (v) related experience on similar projects; and
- (vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) *The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting pilot program authorized in [sections 2 through 4]."*

Section 6. Section 18-8-205, MCA, is amended to read:

"18-8-205. Negotiation of contract for services. (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price ~~which~~ that the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature ~~thereof~~ of the services.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.

(3) *The provisions of this section do not apply to the negotiation of contracts for projects that the department of transportation has determined are part of the design-build contracting pilot program authorized in [sections 2 through 4]."*

Section 7. Section 60-2-111, MCA, is amended to read:

“60-2-111. Letting of contracts on state and federal-aid highways. (1) Except as provided in subsection (2), all contracts for the construction or reconstruction of the highways and streets located on highway systems and state highways as defined in 60-2-125, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as otherwise specifically provided, the commission may enter the types of contracts and upon terms ~~as~~ *that* it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government.

(3) *The commission may award contracts for projects that the department has determined are part of the design-build contracting pilot program authorized in [sections 2 through 4].”*

Section 8. Section 60-2-112, MCA, is amended to read:

“60-2-112. Competitive bidding — reciprocity. (1) Except as provided in subsections (2) through ~~(5)~~ (6), if the estimated cost of any work exceeds \$50,000, the commission shall award the contract by competitive bidding to the lowest responsible and responsive bidder. The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102.

(2) The commission may award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing \$50,000 or less.

(5) *The commission may award a design-build contract under the design-build contracting pilot program if the provisions of [sections 2 through 4] have been met.*

~~(5)~~(6) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, or province or other political subdivision of that country, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country, or province or other political subdivision of that country; and

(b) the department has entered into a reciprocity agreement with or has exchanged letters of information with the foreign country, or province or other political subdivision of that country, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, or province or other political subdivision of that country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, or province or other political subdivision of that country, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, or province or other political subdivision of that country, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, or province or other political subdivision of that country, for projects located in either the United States or the foreign country, or province or other political subdivision of that country.

~~(6)~~(7) For the purposes of subsection ~~(5)~~ (6), "construction" has the meaning provided in 18-2-101."

Section 9. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [sections 1 through 4].

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2003

CHAPTER NO. 193

[SB 108]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; CLARIFYING THAT INSURANCE REQUIREMENTS APPLY ONLY TO WORKERS IN THIS STATE; REDUCING THE LENGTH OF THE INDEPENDENT CONTRACTOR EXEMPTION FROM 3 YEARS TO 2 YEARS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO MAINTAIN A 3-MONTH ADMINISTRATIVE COST BALANCE IN THE UNINSURED EMPLOYERS' FUND; PROVIDING A \$200 PENALTY FOR UNINSURED EMPLOYERS WHO FAIL TO OBTAIN INSURANCE WITHIN 30 DAYS AFTER NOTICE OF THE REQUIREMENT TO OBTAIN WORKERS' COMPENSATION INSURANCE; PROVIDING FOR LATE FEES AND INTEREST WHEN AN EMPLOYER FAILS TO MAKE TIMELY PENALTY AND CLAIM REIMBURSEMENT PAYMENTS; ADDING LATE FEES AND INTEREST TO THE LIEN CREATED FOR AN EMPLOYER'S FAILURE TO PAY PENALTIES OR BENEFIT CLAIMS; PROVIDING A TIME LIMIT FOR PETITIONING THE WORKERS' COMPENSATION COURT AFTER THE MEDIATOR'S REPORT IS MAILED; PROVIDING FOR RECOVERY OF COLLECTION FEES AND COSTS; CLARIFYING THE DEFINITION OF "PERSON WITH A DISABILITY"; CHANGING THE NOTICE DATE OF YEARLY INSURANCE PLAN ASSESSMENTS FROM APRIL 30 TO MAY 31 OF EACH YEAR; PROVIDING THAT FAILURE TO RECEIVE THE CONCURRENCE OF A REPRESENTATIVE OF THE SUBSEQUENT

INJURY FUND FOR COMPROMISE SETTLEMENTS RELIEVES THE FUND OF LIABILITY; REQUIRING THE BOARD OF INVESTMENTS TO INVEST THE MONEY IN THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT; AMENDING SECTIONS 39-71-401, 39-71-503, 39-71-504, 39-71-506, 39-71-520, 39-71-901, 39-71-911, 39-71-915, AND 39-71-1004, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

“39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers’ Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers’ Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers’ Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (c) employment of a dependent member of an employer’s family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);
- (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;
- (f) employment as a direct seller as defined by 26 U.S.C. 3508;
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
- (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;
- (k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, “freelance correspondent” is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, “newspaper carrier”:

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B).

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) *employment of a person who is not an employee or worker in this state as defined in 39-71-118(10).*

(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is a ~~\$25~~ \$17 fee for the initial application. Any subsequent application renewal must be accompanied by a ~~\$25~~ \$17 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for ~~3~~ 2 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall ~~every 3 years~~ submit a renewal application ~~every 2 years~~. ~~A renewal application must be submitted for all independent contractor exemptions approved on or after July 1, 1995.~~ The renewal application and the ~~\$25~~ \$17 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Section 2. Section 39-71-503, MCA, is amended to read:

"39-71-503. Uninsured employers' fund — purpose and administration of fund — maintaining balance for administrative costs — appropriation. (1) There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

(3) (a) ~~Surpluses~~ Except as provided in subsection (3)(b), surpluses and reserves may not be kept for the fund. The department shall make payments

that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(b) The department shall maintain at least a 3-month balance based on projected budget costs for administration of the fund. The balance for administrative costs may be used by the department only in administering the fund.

(4) The amounts necessary for the administration of the fund and for the payment of benefits from ~~this~~ the fund are statutorily appropriated, as provided in 17-7-502, from ~~this~~ the fund.”

Section 3. Section 39-71-504, MCA, is amended to read:

“39-71-504. Funding of fund — option for agreement between department and injured employee. The fund is funded in the following manner:

(1) (a) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer’s workers in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment based on how much premium would have been paid on the employer’s past 3-year payroll for periods within the 3 years when the employer was uninsured.

(b) The fund shall collect from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

(c) In addition to any amounts recovered under subsections (1)(a) and (1)(b), the fund shall collect a penalty of \$200 from an employer that fails to obtain Montana workers’ compensation insurance within 30 days of notice of the requirement.

(2) (a) *An uninsured employer that fails to make timely penalty or claim reimbursement payments required under this part must be assessed a late fee of \$50 for each late payment.*

(b) Any unpaid balance owed to the fund under this part for penalties or claim reimbursement must accrue interest at 12% a year or 1% a month or fraction of a month. Interest on unpaid balances accrues from the date of the original billing.

(c) Late fees and interest assessed pursuant to this subsection (2) must be deposited into the fund for payment of administrative expenses and benefits.

~~(2)~~(3) The department may enter into an agreement with the injured employee or the employee’s beneficiaries to assign to the employee or the beneficiaries all or part of the funds collected by the department from the uninsured employer pursuant to subsection (1)(b).”

Section 4. Section 39-71-506, MCA, is amended to read:

“39-71-506. Lien for payment of unpaid penalties, fees, interest, and claims — levy and execution. (1) If, upon demand of the department, an

uninsured employer refuses to make the payments to the fund that are provided for in ~~subsections (1) and (2) of 39-71-504~~, the unpaid penalties, fees, interest, and claims have the effect of a judgment against the employer at the time the payments become due. 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, it becomes a lien upon all real property of the employer. After satisfying any due process requirements, the department may enforce the judgment at any time within 10 years of creation of the lien.

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

Section 5. Section 39-71-520, MCA, is amended to read:

“39-71-520. Time limit to appeal to mediation — petitioning workers’ compensation court — failure to settle or petition. (1) A dispute concerning uninsured employers’ fund benefits must be appealed to mediation within 90 days from the date of the determination or the *date that the determination is considered final.*

(2) (a) *If the parties fail to reach a settlement through the mediation process, any party may file a petition before the workers’ compensation court.*

(b) *A party’s petition must be filed within 60 days of the mailing of the mediator’s report provided for in 39-71-2411 unless the parties stipulate in writing to a longer time period for filing the petition.*

(c) *If a settlement is not reached through mediation and a petition is not filed within 60 days of the mailing of the mediator’s report, the determination by the department is final.”*

Section 6. Collection of penalties, claim costs, late fees, and interest — liability for payment of collection costs. (1) If the department is unable to collect penalties, claim costs, late fees, or interest assessed pursuant to the provisions of this part, the department may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department, or assistance costs charged the department by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

Section 7. Section 39-71-901, MCA, is amended to read:

“39-71-901. Definitions. As used in this part, the following definitions apply:

(1) “Certificate” means documentation issued by the department to an individual who is a person with a disability.

(2) "Fund" means the subsequent injury fund in the proprietary fund category.

(3) "Person with a disability" means a person who has a medically certifiable permanent impairment that is a substantial obstacle to obtaining employment or to obtaining reemployment if the ~~employee~~ person should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection."

Section 8. Section 39-71-911, MCA, is amended to read:

"39-71-911. Obligation to make payments on behalf of fund not an independent liability. ~~The~~ *Except as provided in 39-71-909 and [section 10], the obligation imposed by this part on the insurer to make payments on behalf of the fund does not impose an independent liability on the insurer.*"

Section 9. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurer — employers — definition — collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act and the Occupational Disease Act of Montana without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before ~~April 30~~ *May 31* each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge."

Section 10. Concurrence of fund in settlements. (1) Petitions for compromise settlements that potentially involve payments from the fund must have written concurrence by an authorized representative of the fund prior to submission for department approval.

(2) The failure to receive written concurrence from the fund's representative relieves the fund of any liability for payment of benefits for a compromise settlement, and the obligation to pay remains with the insurer.

Section 11. Section 39-71-1004, MCA, is amended to read:

"39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account must be made each year upon an assessment by the department as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding calendar year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding calendar year;

(c) by the state fund, an amount to be assessed by the department, not exceeding 1% of the compensation paid by the state fund to injured employees in Montana during the preceding calendar year.

(2) Separate accounts of the amounts that were collected and disbursements that were made from the industrial accident rehabilitation account in the state special revenue fund must be kept for each of the plans. If in any fiscal year the amount that was collected from the employers under any plan exceeds the amount of payments for employees of the employers under the plan, the assessment against the employers under the plan for the following year must be reduced.

(3) The payments provided for in this section must be made to the department, which shall credit the sums paid to the industrial accident rehabilitation account in the custody of the state treasurer. Disbursements from the account must be made after approval by the department.

(4) *The board of investments shall invest the money of the industrial accident rehabilitation account, and the investment income must be deposited in the industrial accident rehabilitation account.*

~~(4)~~(5) The funds allocated or contributed as provided in this section may not be used for payment of administrative expenses of the department.

~~(5)~~(6) The methods and processes used to disburse rehabilitation expense payments to eligible disabled workers are procedural and do not affect the substantive rights of those disabled workers."

Section 12. Codification instruction. (1) [Section 6] 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 6].

(2) [Section 10] is intended to be codified as an integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to [section 10].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 15. Effective date. [This act] is effective July 1, 2003.

Approved April 1, 2003

CHAPTER NO. 194

[SB 139]

AN ACT REPLACING THE EXISTING INTERSTATE COMPACT ON JUVENILES WITH THE NEW INTERSTATE COMPACT ON JUVENILES; AMENDING SECTION 41-6-101, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-6-101, MCA, is amended to read:

“41-6-101. Enactment — provisions. The Interstate Compact on Juveniles ~~as contained herein~~ is hereby enacted into law and entered into by this state with all other jurisdictions legally joining ~~therein~~ in the compact in the form substantially as follows:

The contracting states solemnly agree that:

Article I. Findings and Purposes

~~(1) Juveniles who are not under proper supervision and control or who have absconded, escaped, or run away are likely to endanger their own health, morals, and welfare and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:~~

- ~~(a) cooperative supervision of delinquent juveniles on probation or parole;~~
- ~~(b) the return, from one state to another, of delinquent juveniles who have escaped or absconded;~~
- ~~(c) the return, from one state to another, of nondelinquent juveniles who have run away from home; and~~
- ~~(d) additional measures for the protection of juveniles and of the public which any two or more of the party states may find desirable to undertake cooperatively.~~

~~(2) In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative, and protective policies which guide~~

~~their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.~~

~~Article II. Existing Rights and Remedies~~

~~All remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures and shall not be in derogation of parental rights and responsibilities.~~

~~Article III. Definitions~~

~~For the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected, or dependent children; "state" means any state, territory, or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.~~

~~Article IV. Return of Runaways~~

~~(1) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent,~~

~~neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.~~

~~(2) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.~~

~~(3) The state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.~~

~~(4) "Juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.~~

Article V. Return of Escapees and Absconders

~~(1) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile if known at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.~~

~~(2) Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time not exceeding 90 days as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the~~

~~delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.~~

~~(3) The state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation cost of such return.~~

~~Article VI. Voluntary Return Procedure~~

~~Any delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(1) and (2) or of Article V(1) and (2), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located, and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.~~

~~Article VII. Cooperative Supervision of Probationers and Parolees~~

~~(1) The duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer supervision accordingly.~~

~~(2) Each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.~~

~~(3) After consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.~~

~~(4) The sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.~~

~~Article VIII. Responsibility for Costs~~

~~(1) The provisions of Articles IV(3), V(3), and VII(4) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of cost or responsibilities therefor.~~

~~(2) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(3), V(3), or VII(4) of this compact.~~

~~Article IX. Detention Practices~~

~~To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup or be detained or transported in association with criminal, vicious, or dissolute persons.~~

~~Article X. Supplementary Agreements~~

~~The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:~~

~~(1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;~~

~~(2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody;~~

~~(3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;~~

~~(4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;~~

~~(5) provide for reasonable inspection of such institutions by the sending state;~~

~~(6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and~~

~~(7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.~~

~~Article XI. Acceptance of Federal and Other Aid~~

~~Any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government or any agency thereof and from any person, firm, or corporation for any of the purposes and functions of this compact and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.~~

~~Article XII. Compact Administrators~~

~~The governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms and provisions of this compact.~~

~~Article XIII. Execution of Compact~~

~~This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.~~

~~Article XIV. Renunciation~~

~~This compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements and shall not be subject to the 6 months' renunciation notice of the present article.~~

~~Article XV. Severability~~

~~The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.~~

~~Article XVI. Rendition~~

~~(1) This amendment shall provide additional remedies and shall be binding only as among and between those party states which specifically execute the same.~~

~~(2) All provisions and procedures of Articles V and VI of this compact shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of this compact shall be forwarded by the judge of the court in which the petition has been filed.~~

Article I. Purpose

(1) *The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in doing so have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress, by enacting 4 U.S.C. 112, has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.*

(2) *It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to:*

(a) *ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;*

(b) *ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;*

(c) *return juveniles who have run away, absconded, or escaped from supervision or control or who have been accused of an offense to the state requesting their return;*

(d) *make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;*

- (e) provide for the effective tracking and supervision of juveniles;
 - (f) equitably allocate the costs, benefits, and obligations of the compacting states;
 - (g) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or other criminal or juvenile justice agencies that have jurisdiction over juvenile offenders;
 - (h) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;
 - (i) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;
 - (j) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials and establish regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;
 - (k) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;
 - (l) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in that activity; and
 - (m) coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision, and other compacts affecting juveniles, particularly in those cases in which concurrent or overlapping supervision issues arise.
- (3) It is the policy of the compacting states that the activities conducted by the interstate commission created in this section are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact must be reasonably and liberally construed to accomplish the purposes and policies of the compact.

Article II. Definitions

As used in this compact, unless the context clearly requires a different construction, the following definitions apply:

- (1) "Bylaws" means those bylaws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct.
- (2) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.
- (3) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact and responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.
- (4) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Department" means the department of corrections provided for in 2-15-2301.

(7) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator, pursuant to the terms of this compact, and responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(8) "Interstate commission" means the interstate commission for juveniles created by Article III of this compact.

(9) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the interstate commission, including:

(a) an accused delinquent, who is a person charged with an offense that, if committed by an adult, would be a criminal offense;

(b) an accused status offender, who is a person charged with an offense that, if committed by an adult, would not be a criminal offense;

(c) an adjudicated delinquent, who is a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(d) an adjudicated status offender, who is a person found to have committed an offense that, if committed by an adult, would not be a criminal offense; and

(e) a nonoffender, who is a person in need of supervision who has not been accused or adjudicated a delinquent or status offender.

(10) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(11) "Probation" or "parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(12) "Rule" means a written statement by the interstate commission promulgated pursuant to Article VI of this compact that:

(a) is of general applicability;

(b) implements, interprets, or prescribes a policy or provision of the compact or an organizational, procedural, or practice requirement of the interstate commission;

(c) has the force and effect of statutory law in a compacting state, if adopted in the state; and

(d) includes the amendment, repeal, or suspension of an existing rule.

(13) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

Article III. Interstate Commission for Juveniles

(1) The compacting states hereby create the "Interstate Commission for Juveniles". The interstate commission is a body corporate and joint agency of the compacting states. The interstate commission has all the responsibilities, powers, and duties set forth in this section and additional powers that may be

conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(2) The interstate commission consists of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision created under this section. The commissioner is the compact administrator, deputy compact administrator, or designee from that state who shall serve on the interstate commission in that capacity under or pursuant to the applicable law of the compacting state.

(3) In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. The noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, interstate compact for the placement of children, interstate compact for adult offender supervision, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the interstate commission must be *ex officio*, nonvoting members. The interstate commission may provide in its bylaws for additional *ex officio*, nonvoting members, including members of other national organizations, in numbers determined by the interstate commission.

(4) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states constitutes a quorum for the transaction of business unless a larger quorum is required by the bylaws of the interstate commission.

(5) The interstate commission shall meet at least once each calendar year. The presiding officer may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice must be given of all meetings, and meetings must be open to the public.

(6) The interstate commission shall establish an executive committee, which must include interstate commission officers, members, and others as determined by the bylaws. The executive committee has the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and interstate commission staff, administer enforcement and compliance with the provisions of the compact, its bylaws, and its rules, and perform other duties as directed by the interstate commission or set forth in the bylaws.

(7) Each member of the interstate commission has the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and may not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(8) The interstate commission's bylaws must establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official

records to the extent that they would adversely affect personal privacy rights or proprietary interests.

(9) Public notice must be given of all meetings, and all meetings must be open to the public except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public when it determines by two-thirds vote that an open meeting would be likely to:

(a) relate solely to the interstate commission's internal personnel practices and procedures;

(b) disclose matters specifically exempted from disclosure by statute;

(c) disclose trade secrets or commercial or financial information that is privileged or confidential;

(d) involve accusing any person of a crime or formally censuring any person;

(e) disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) disclose investigative records compiled for law enforcement purposes;

(g) disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of the person or entity;

(h) disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; and

(i) specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or other legal proceeding.

(10) For every meeting closed pursuant to this provision, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that must fully and clearly describe all matters discussed in any meeting and must provide a full and accurate summary of any actions taken and the reasons for the actions, including a description of each of the views expressed on any item and the record of any roll call vote, reflected in the vote of each member on the question. All documents considered in connection with any action must be identified in the minutes.

(11) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules, which must specify the data to be collected, the means of collection and data exchange, and reporting requirements. The methods of data collection, exchange, and reporting must in so far as is reasonably possible conform to up-to-date technology and coordinate the interstate commission's information functions with the appropriate repository of records.

Article IV. Powers and Duties of the Interstate Commission

(1) The interstate commission has the powers and duties to:

(a) provide for dispute resolution among compacting states;

(b) promulgate rules to effect the purposes and obligations as enumerated in this compact. A rule proposed or adopted by the interstate commission is not binding on this state unless adopted by the department.

(c) oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission;

(d) enforce compliance with the compact provisions and bylaws adopted and the rules promulgated by the interstate commission, using all necessary and proper means, including but not limited to the use of the judicial process;

(e) establish and maintain offices that must be located within one or more of the compacting states;

(f) purchase and maintain insurance and bonds;

(g) borrow, accept, hire, or contract for services of personnel;

(h) establish and appoint committees and hire staff that it considers necessary for the carrying out of its functions, including but not limited to an executive committee, as required by Article III, which has the power to act on behalf of the interstate commission in carrying out its powers and duties under this section;

(i) elect or appoint officers, attorneys, employees, agents, or consultants; to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(j) accept, receive, use, and dispose of donations and grants of money, equipment, supplies, materials, and services;

(k) lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use any property, real, personal, or mixed;

(l) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(m) establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;

(n) sue and be sued;

(o) adopt a seal and bylaws governing the management and operation of the interstate commission;

(p) perform functions that may be necessary or appropriate to achieve the purposes of this compact;

(q) report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. The reports must include any recommendations that may have been adopted by the interstate commission.

(r) coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in that activity; and

(s) establish uniform standards of the reporting, collecting, and exchanging of data.

(2) The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

Article V. Organization and Operation of the Interstate Commission

(1) The interstate commission shall, by a majority of the members present and voting, within 12 months after the first interstate commission meeting,

adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:

- (a) establishing the fiscal year of the interstate commission;
- (b) establishing an executive committee and other committees that may be necessary;
- (c) providing for the establishment of committees and governing any general or specific delegation of any authority or function of the interstate commission;
- (d) providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each meeting;
- (e) establishing the titles and responsibilities of the officers of the interstate commission;
- (f) providing a mechanism for concluding the operations of the interstate commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations;
- (g) providing startup rules for initial administration of the compact; and
- (h) establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(2) (a) The interstate commission shall, by a majority of the members, elect annually from among its members a presiding officer and a vice presiding officer, each of whom has the authority and duties that may be specified in the bylaws. The presiding officer or, in the presiding officer's absence or disability, the vice presiding officer shall preside at all meetings of the interstate commission. The elected officers shall serve without compensation or remuneration from the interstate commission. However, subject to the availability of budgeted funds, the officers must be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(b) The interstate commission shall, through its executive committee, appoint or retain an executive director for the period, upon the terms and conditions and for the compensation that the interstate commission may consider appropriate. The executive director shall serve as secretary to the interstate commission, but may not be a member, and shall hire and supervise other staff as may be authorized by the interstate commission.

(3) (a) Except for a claim arising from intentional conduct or gross negligence, the interstate commission's members, officers, executive director, and employees are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred within the course and scope of interstate commission employment, duties, or responsibilities.

(b) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of the person's employment or duties for acts, errors, or omissions occurring within the person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents.

(c) *The interstate commission shall defend an individual referred to in subsection (3)(a) in any civil action for which the individual is granted immunity under subsection (3)(a).*

(d) *The interstate commission shall indemnify an individual referred to in subsection (3)(a) in the amount of any settlement obtained against the individual arising out of a civil action for which the individual is granted immunity under subsection (3)(a).*

Article VI. Rulemaking Functions of the Interstate Commission

(1) *The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.*

(2) *Rulemaking must occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant to this article. The rulemaking must substantially conform to the principles of the Model State Administrative Procedures Act, 1981, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or other administrative procedures act that the interstate commission considers appropriate, consistent with due process requirements under the United States constitution as now or later interpreted by the United States supreme court. All rules and amendments become binding as of the date specified, as published with the final version of the rule as approved by the interstate commission.*

(3) *When promulgating a rule, the interstate commission shall, at a minimum:*

(a) *publish the proposed rule's entire text stating the reasons for that proposed rule;*

(b) *allow and invite all persons to submit written data, facts, opinions, and arguments, which information must be added to the record and be made publicly available;*

(c) *provide an opportunity for an informal hearing if petitioned by 10 or more persons; and*

(d) *promulgate a final rule and its effective date, if appropriate, based on input from state or local officials or interested persons.*

(4) *The interstate commission shall allow, not later than 60 days after a rule is promulgated, any interested person to file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of a rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.*

(5) *If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that rule to have no further effect in any compacting state.*

(6) *The existing rules governing the operation of the interstate compact on juveniles superseded by this act are void 12 months after the first meeting of the interstate commission created in Article III of this compact.*

(7) *Upon determination by the interstate commission that a state of emergency exists, it may promulgate an emergency rule that must become*

effective immediately upon adoption. However, the usual rulemaking procedures provided under this section must be retroactively applied to the rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

*Article VII. Oversight, Enforcement, and Dispute
Resolution by the Interstate Commission*

(1) (a) The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor the activities being administered in noncompacting states that may significantly affect compacting states.

(b) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact must be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission is entitled to receive all service of process in that proceeding and must have standing to intervene in the proceeding for all purposes.

(2) (a) The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of the compact, as well as issues and activities pertaining to compliance with the provisions of the compact and its rules and bylaws.

(b) The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any means set forth in Article XI of this compact.

Article VIII. Finance

(1) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff, which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state. The interstate commission shall promulgate a rule binding upon all compacting states that governs the assessment.

(3) The interstate commission may not incur any obligations of any kind prior to securing the funds adequate to meet the obligations. The interstate

commission may not pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(4) *The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission must be subject to the audit and accounting procedures established under its bylaws and as provided under 5-13-304. However, all receipts and disbursements of funds handled by the interstate commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the interstate commission.*

Article IX. The State Council

Each member state shall create a state council for interstate juvenile supervision. Although each state may determine the membership of its own state council, its membership must include at least one representative from the executive, judicial, and legislative branches of government and victims groups and the compact administrator, deputy compact administrator, or a designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council shall advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and other duties as may be determined by that state, including but not limited to development of policy concerning operations and procedures of the compact within that state.

Article X. Compacting States, Effective Date, and Amendment

(1) *Any state is eligible to become a compacting state.*

(2) *The compact becomes effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date is the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter, it becomes effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees must be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.*

(3) *The interstate commission may propose amendments to the compact for enactment by the compacting states. An amendment may not become effective and binding upon the interstate commission and the compacting states until it is enacted into law by unanimous consent of the compacting states.*

Article XI. Withdrawal, Default, Termination, and Judicial Enforcement

(1) (a) *Once effective, the compact must continue in force and remain binding upon each compacting state. However, a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.*

(b) *The effective date of withdrawal is the effective date of the repeal.*

(c) *The withdrawing state shall immediately notify the presiding officer of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt of the notice.*

(d) *The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any*

obligations, the performance of which extends beyond the effective date of withdrawal.

(e) Reinstatement following withdrawal of any compacting state must occur upon the withdrawing state reenacting the compact or upon a later date as determined by the interstate commission.

(2) (a) If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact or the bylaws or promulgated rules, the interstate commission may impose any of the following penalties:

(i) remedial training and technical assistance as directed by the interstate commission;

(ii) alternative dispute resolution;

(iii) fines, fees, and costs in amounts that are considered to be reasonable as fixed by the interstate commission; and

(iv) suspension or termination of membership in the compact, which may be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has determined that the offending state is in default. Immediate notice of suspension must be given by the interstate commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include but are not limited to failure of a compacting state to perform the obligations or responsibilities imposed upon it by this compact, the bylaws, or promulgated rules and any other grounds designated in interstate commission bylaws and rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, the defaulting state must be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges and benefits conferred by this compact must be terminated from the effective date of termination.

(b) Within 60 days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of the termination.

(c) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations, the performance of which extends beyond the effective date of termination.

(d) The interstate commission may not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(e) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

(3) The interstate commission may, by majority vote of the members, initiate legal action in the United State district court for the District of Columbia or, at

the discretion of the interstate commission, in the federal district where the interstate commission has its offices, to enforce compliance with the provisions of the compact and its bylaws and promulgated rules against any compacting state in default. In the event that judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorney fees.

(4) (a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(b) Upon the dissolution of this compact, the compact is void and is of no further effect, the business and affairs of the interstate commission are concluded, and any surplus funds must be distributed in accordance with the bylaws.

Article XII. Severability and Construction

(1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is unenforceable, the remaining provisions of the compact remain enforceable.

(2) The provisions of this compact must be liberally constructed to effectuate its purposes.

Article XIII. Binding Effect of Compact and Other Laws

(1) Nothing in this compact prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) (a) All lawful actions of the interstate commission, including all bylaws and rules promulgated by the interstate commission, are binding upon the compacting states if adopted by the department.

(b) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding the meaning or interpretation.

(d) In the event that any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by the provision upon the interstate commission is ineffective and the obligations, duties, powers, or jurisdiction remains in the compacting state and must be exercised by the agency to which the obligations, duties, powers, or jurisdiction is delegated by law in effect at the time that this compact becomes effective."

Section 2. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 3. Contingent effective date. [This act] is effective upon receipt of written notification by the secretary of state from the director of the department of corrections that the compact has been legislatively enacted into law by the 35th compacting state.

Approved April 1, 2003

CHAPTER NO. 195

[SB 151]

AN ACT GENERALLY REVISING THE MONTANA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT; CLARIFYING THAT THE ACT APPLIES TO INSOLVENT INSURERS AS WELL AS IMPAIRED INSURERS; ESTABLISHING PROCEDURES FOR AN ASSOCIATION TO ELECT TO CONTINUE REINSURANCE; PROVIDING FOR THE DISTRIBUTION OF DEPOSITS PAID TO AN ASSOCIATION; CLARIFYING THE SCOPE OF COVERAGE OF THE ACT; REVISING DEFINITIONS; DEFINING "BENEFIT PLAN", "INSOLVENT INSURER", "MOODY'S CORPORATE BOND YIELD AVERAGE", "PLAN SPONSOR", "PRINCIPAL PLACE OF BUSINESS", "RECEIVERSHIP COURT", "STRUCTURED SETTLEMENT ANNUITY", AND "SUPPLEMENTAL CONTRACT"; REVISING REQUIREMENTS FOR ACCOUNTS MAINTAINED BY AN ASSOCIATION; CLARIFYING THE STANDING AND GENERAL POWERS OF AN ASSOCIATION; CLARIFYING MEETING AND NEGOTIATION REQUIREMENTS; CLARIFYING THE DUTIES AND POWERS OF THE INSURANCE COMMISSIONER; REVISING AN ASSOCIATION'S POWERS PRIOR TO AND DURING THE LIQUIDATION OF A MEMBER INSURER; REVISING ASSIGNMENT AND SUBROGATION PROVISIONS; REVISING BENEFIT LIABILITY OF AN ASSOCIATION; AMENDING SECTIONS 33-10-201, 33-10-202, 33-10-203, 33-10-205, 33-10-206, 33-10-207, 33-10-210, 33-10-215, 33-10-217, 33-10-219, 33-10-220, 33-10-221, 33-10-222, 33-10-223, 33-10-224, 33-10-226, AND 33-10-227, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Association election to continue reinsurance. (1) Within 1 year after the coverage date, which is the date that the association becomes responsible for the obligations of a member insurer, the association may elect to succeed to the rights and obligations of a member insurer that accrued on or after the coverage date under an indemnity reinsurance agreement entered into by the member insurer as the ceding insurer. The association may not exercise an election with respect to a reinsurance agreement if the rehabilitator or liquidator of the member insurer has previously expressly disaffirmed the agreement.

(2) The election to succeed to the rights and obligations of the member insurer must be accomplished through notice to the supervisor, rehabilitator, or liquidator and to the affected reinsurers.

(3) If the association makes an election, the association:

(a) is responsible for all unpaid premiums due under the agreements for the periods before and after the coverage date and is responsible for the performance of all obligations to be performed after the coverage date in each contract covered, either in whole or in part, by the association. The association may charge contracts covered in part by the association the costs for reinsurance in excess of the obligations of the association, using reasonable allocation methods.

(b) is entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or

in part. In order to receive these amounts, the association must be obligated to pay the beneficiary of the underlying policy or contract a portion of the amount equal to the excess of the amount received by the association minus:

- (i) the benefits paid by the association under the policy or contract; and
- (ii) any amount properly retained by the impaired or insolvent insurer for the loss or event.

(c) shall calculate, within 30 days of the election, the net balance due to or from the association under each reinsurance agreement as of the date of the association's election, giving full credit to all items paid to either the member insurer, its rehabilitator or liquidator, or the indemnity reinsurer during the period between the coverage date and the date of the association's election. Either the association or the indemnity insurer shall pay the net balance due the other within 5 days of completion of the calculation. If the rehabilitator or liquidator has received any amount under this section, the rehabilitator or liquidator shall remit it to the association as soon as practicable.

(4) If, within 60 days of the election, the association pays the premiums due for the periods before and after the coverage date that relate to the contracts covered by the association, either in whole or in part, the reinsurer may not terminate the reinsurance agreement insofar as the agreement relates to contracts covered by the association, in whole or in part, and is not entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the association.

(5) The association may transfer any rights or obligations under this section to a third-party insurer under terms agreed upon by the association and the third-party insurer.

(6) Except as otherwise expressly stated in this section, this section may not be construed to alter or modify the terms and conditions of the reinsurance agreement of an insolvent member insurer. This section is not intended to:

(a) abrogate or limit any rights of a reinsurer to claim that it is entitled to rescind a reinsurance agreement; or

(b) give a policyowner or beneficiary an independent cause of action against an insurer that is not otherwise provided for in the reinsurance agreement.

Section 2. Deposits paid to association. (1) A deposit in this state that is held pursuant to law or required by the commissioner to be held for the benefit of creditors, including policyowners, and that is not turned over to the liquidator upon entry of the final order of liquidation or upon entry of the order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state pursuant to 33-2-1381 must be promptly paid to the association.

(2) The association is entitled to retain a portion of any amount paid under this section equal to the percentage determined by dividing the aggregate amount of policyowner claims related to the insolvency for which the association has provided statutory benefits by the aggregate amount of all policyowner claims in this state related to the insolvency. The association shall remit to the domiciliary receiver the amount paid to the association and not retained under this section.

Section 3. Section 33-10-201, MCA, is amended to read:

“33-10-201. Short title, purpose, scope, and construction. (1) This part may be cited as the “Montana Life and Health Insurance Guaranty Association Act”.

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment *or insolvency* of the insurer issuing the policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments *or insolvencies*.

(4) This part applies to direct, nongroup life, health, *and annuity policies and contracts*, and ~~their supplemental policies or contracts~~, to certificates under direct group policies and contracts, and to unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement ~~agreements annuities~~, lottery ~~contracts annuities issued in connection with government lotteries~~, and any immediate or deferred annuity contracts.

(5) This part provides coverage for policies and contracts specified in subsection ~~(6)~~ (4):

(a) to persons who are owners of or certificate holders under covered policies *or contracts, other than unallocated annuity contracts and structured settlement annuities that are provided for in subsections (6) and (7), in the case of unallocated annuity contracts, to the persons who are contract holders* if the persons:

(i) are residents; or

(ii) are not residents, but only under all of the following conditions:

(A) the insurers that issued the policies are domiciled in this state;

(B) the insurers have not held a license or certificate of authority in the state in which the persons reside;

(C) the state has an association similar to the association created under this part; and

(D) the persons are not eligible for coverage by that association; and

(b) to persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subsection (5)(a).

(6) *With respect to unallocated annuity contracts, this part provides coverage to:*

(a) *persons who are the owners of unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and*

(b) persons who are owners of unallocated annuity contracts issued in connection with government lotteries if the owners are residents.

(7) (a) With respect to structured settlement annuities, this part provides coverage to a person who is:

- (i) a payee under a structured settlement annuity;
- (ii) a beneficiary of a payee if the payee is deceased; or
- (iii) a resident payee, regardless of where the contract owner resides.

(b) This part also applies to a payee of a structured settlement annuity contract who is not a resident if:

(i) the contract owner of the structured settlement annuity is a resident, the insurer that issued the structured settlement annuity is domiciled in this state, or the state in which the contract owner resides has an association similar to the association created by this part; and

(ii) the payee, beneficiary, or contract owner is not eligible for coverage by the association in the state in which the payee or contract owner resides.

(8) This part does not provide coverage to:

(a) a person who is a payee or a beneficiary of a contract owner who is the resident of another state if the payee or beneficiary is afforded any coverage by the association of another state; or

(b) a person described in subsection (5) if the person is afforded any coverage by the association of another state.

(9) (a) This part is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this part is provided coverage under the laws of any other state, the person may not be provided coverage under this part.

(b) In determining the application of this subsection (9) to situations in which a person, such as an owner, payee, beneficiary, or assignee, could be covered by the associations of more than one state, this part must be construed in conjunction with other state laws to result in coverage by only one association.

~~(6)(10) This part covers persons specified in subsection (5)(a) for direct, nongroup life, health, annuity, and supplemental policies and contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, allocated and unallocated funding agreements, structured settlement agreements, lottery contracts, and immediate or deferred annuity contracts. This part does not apply to provide coverage for:~~

(a) policies or contracts or any part of the policies or contracts *not* guaranteed by the member insurer or under which the risk is borne by the ~~policyholder~~ policyowner;

(b) a policy or contract or part of the policy or contract assumed by the impaired member insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(c) any portion of a policy or contract to the extent that the rate of interest on which it is based *or the interest rate, crediting rate, or similar factor determined*

by the use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(i) averaged over the period of 4 years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average averaged for that same 4-year period or for the lesser period if the policy or contract was issued less than 4 years before the association became obligated; and

(ii) on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's corporate bond yield average as is most recently available;

(d) any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees, ~~or~~ members, *or others* to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or ~~similar entity~~ *other person* under:

(i) a multiple employer welfare arrangement, as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(e) any portion of a policy or contract to the extent that it provides dividends, ~~or~~ experience rating credits, *or voting rights* or provides that any fees or allowances be paid to any person, including the ~~policy~~ *policyowner* or contract ~~holder~~ *owner*, in connection with the service to or administration of the policy or contract;

(f) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(g) any unallocated annuity contract issued to *or in connection with* an employee benefit plan that is protected under the federal pension benefit guaranty corporation *regardless of whether the federal pension benefit guaranty corporation is liable to make any payments with respect to the employee benefit plan; and*

(h) any portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery;

(i) *an obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the policyowner or contract owner, including without limitation:*

(i) *claims based on marketing materials;*

(ii) *claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable requirements for filing policy forms or for policy approval;*

(iii) *misrepresentations of or regarding policy benefits;*

(iv) *extracontractual claims; or*

(v) a claim for penalties or consequential or incidental damages;

(j) a contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer; or

(k) a portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policyowner's or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this part. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this section, the interest or changes in value determined by using the procedures defined in the policy or contract must be credited as if the contractual date of crediting interest or changes in value was the date of impairment or insolvency and the interest or changes in value are not subject to forfeiture.

~~(7)~~(11) This part must be liberally construed to effect the purpose under subsections (2) and (3), which constitute an aid and guide to interpretation.

~~(8)~~(12) This part may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability."

Section 4. Section 33-10-202, MCA, is amended to read:

"33-10-202. Definitions. As used in this part, the following definitions apply:

(1) "Account" means either of the two accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.

~~(3)~~(4) "Contractual obligation" means any obligation under covered policies.

~~(4)~~(5) "Covered policy" means any policy or contract within the scope of this part under 33-10-201(4) through ~~(6)~~ (10).

~~(5)~~(6) "Impaired insurer" means:

~~(a) an insurer that becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or~~

~~(b) an insurer considered by the commissioner to be unable or potentially unable to fulfill its contractual obligations a member insurer that is not an insolvent insurer and that is placed under an order of rehabilitation or supervision by a court of competent jurisdiction.~~

(7) "Insolvent insurer" means a member insurer that is placed under an order of liquidation by a court of competent jurisdiction upon a finding of insolvency.

~~(6)~~(8) (a) "Member insurer" means an insurer that is licensed or that holds a certificate of authority to transact any kind of insurance in this state for which coverage is provided under 33-10-201 and 33-10-224 and includes any insurer

whose license or certificate of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn.

(b) The term does not include:

(i) a health service corporation;

(ii) a health maintenance organization;

(iii) a fraternal benefit society;

(iv) a mandatory state pooling plan;

(v) a mutual assessment company or any entity that operates on an assessment basis;

(vi) an insurance exchange; ~~or~~

(vii) *an organization that has a certificate or license limited to the issuance of charitable gift annuities; or*

~~(vii) (viii) an entity similar to any of the entities listed in subsections (6)(b)(i) through (6)(b)(vi) (8)(b)(i) through (8)(b)(vii).~~

(9) *"Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, inc., or its successor.*

(10) *"Owner", "contract owner", and "policyowner" mean the person who is identified as the legal owner under the terms of a policy or contract or who is vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and who is properly recorded as the owner on the books of the insurer.*

~~(7)~~(11) *"Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.*

(12) *"Plan sponsor" means:*

(a) *the employer in the case of a benefit plan established or maintained by a single employer;*

(b) *the employee organization in the case of a benefit plan established or maintained by an employee organization; or*

(c) *in the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.*

~~(8)~~(13) (a) *"Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations on premiums and dividends paid or credited to policyholders on the direct business.*

~~(b) The term does not include premiums and considerations on contracts between insurers and reinsurers.~~

~~(c) As used in 33-10-227, premiums are those for the calendar year preceding the determination of impairment the amount or consideration received on covered policies or contracts less return premiums, considerations, and deposits, and less dividends and experience credits.~~

(b) *The term does not include:*

(i) amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided pursuant to 33-10-201(10), except that an assessable premium may not be reduced based on 33-10-201(10)(c) relating to interest limitations and 33-10-224 relating to one individual, one participant, and one contract owner;

(ii) premiums in excess of \$5 million on an unallocated annuity contract not issued under a governmental retirement benefit plan or the plan's trustee established under section 401, 403(b), or 457 of the Internal Revenue Code; or

(iii) premiums in excess of \$5 million with respect to multiple nongroup policies of life insurance owned by one owner, whether the policyowner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons.

(14) "Principal place of business" of a plan sponsor means:

(a) the state in which more than 50% of the participants in the benefit plan are employed;

(b) with respect to a plan sponsor as defined in 33-10-202(12)(c), the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan, or, in lieu of specific or clear designation of a principal place of business, the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question; or

(c) if 50% of the participants are not employed in a single state, the single state in which the individuals who establish policies for the direction, control, and coordination of the operations of the plan sponsor as a whole primarily exercise that function, as determined by the association in its reasonable judgment by considering the following factors:

(i) the state in which the primary executive and administrative headquarters of the plan sponsor is located;

(ii) the state in which the principal office of the chief executive officer of the plan sponsor is located;

(iii) the state in which the board of directors or similar governing person or persons of the plan sponsor conduct its meetings;

(iv) the state in which the executive or management committee of the board of directors or similar governing person or persons of the plan sponsor conduct the majority of its meetings;

(v) the state from which the management of the overall operations of the plan sponsor is directed; and

(vi) in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors.

(15) "Receivership court" means the court in the insolvent or impaired insurer's state that has jurisdiction over the supervision, rehabilitation, or liquidation of the insurer.

~~(9)~~(16) "Resident" means a person who resides in this state at the time that the impairment is determined and to whom contractual obligations are owed. A person may be a resident of only one state, and in the case of a person other than an individual, the person is a resident of the state where its principal place of

business is located. Citizens of the United States who are either residents of foreign countries or residents of the possessions, territories, or protectorates of the United States and who do not have an association similar to the association created by this part must be considered residents of the state of domicile of the insurer that issued the policies or contracts.

(17) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(18) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

~~(10)~~ (19) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate."

Section 5. Section 33-10-203, MCA, is amended to read:

"33-10-203. Creation of the association — accounts — supervision by commissioner. (1) There is created a nonprofit legal entity to be known as the Montana life and health insurance guaranty association. All member insurers ~~shall~~ *must* be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under 33-10-216 and shall exercise its powers through a board of directors established under 33-10-204.

(2) For purposes of administration and assessment, the association shall maintain two accounts:

(a) the health insurance account; and

(b) the life insurance and annuity account that includes the following subaccounts:

(i) the life insurance account;

(ii) the annuity account *that includes contracts owned by a governmental retirement plan or the plan's trustee established under section 401, 403(b), or 457 of the Internal Revenue Code, but does not otherwise include unallocated annuities;* and

(iii) the unallocated annuity account that must include unallocated annuity contracts ~~qualified~~ *owned by a governmental retirement benefit plan or the plan's trustee established under section 401, 403(b), or 457 of the Internal Revenue Code.*

(3) The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state. ~~Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association."~~

Section 6. Section 33-10-205, MCA, is amended to read:

"33-10-205. General powers of association — standing. (1) *In addition to other rights provided by law, the* ~~The~~ association may:

(a) enter into ~~such~~ *contracts as* ~~as~~ *that* are necessary or proper to carry out the provisions and purposes of this part;

(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under 33-10-228 *and to settle claims or potential claims against it*;

(c) borrow money to effect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default ~~shall~~ *must* be legal investments for domestic insurers and may be carried as admitted assets.

(d) employ or retain ~~such~~ persons *as who* are necessary to handle the financial transactions of the association and to perform ~~such~~ other functions *as that* become necessary or proper under this part;

(e) negotiate and contract with any liquidator, rehabilitator, supervisor, or ancillary receiver to carry out the powers and duties of the association;

(f) take ~~such~~ legal action *as that* may be necessary to avoid payment of improper claims;

(g) exercise, for the purposes of this part and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but ~~in no case may~~ the association *may not in any case* issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer;

(h) *request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this part with respect to the person. The person shall promptly comply with the request.*

(i) *take other necessary or appropriate action to discharge its duties and obligations under this part or to exercise its powers under this part.*

(2) The association may render assistance and advice to the commissioner, upon ~~his~~ request, concerning rehabilitation, *liquidation*, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(3) The association ~~shall have~~ *has* standing to appear or *intervene* before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this part or *before any court with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. Such* The association's standing ~~shall extend~~ *extends* to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring, *modifying*, or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. *The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or before a court with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.*

(4) *The board of directors of the association may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this part in an economical and efficient manner.*

(5) *When the association has arranged or offered to provide the benefits of this part to a covered person under a plan or arrangement that fulfills the association's obligations under this part, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.*

(6) *Venue in a suit against the association arising under this part is in the first judicial district. The association is not required to give an appeal bond in an appeal that relates to a cause of action arising under this part.*"

Section 7. Section 33-10-206, MCA, is amended to read:

"33-10-206. Records of meetings and negotiations. Records ~~shall~~ *must* be kept of all negotiations and meetings ~~in which the association or its representatives are involved~~ *of the board of directors held* to discuss the activities of the association in carrying out its powers and duties under this part. Records of ~~such~~ negotiations or meetings *pertaining to an impaired or insolvent insurer shall* may be made public only upon the termination of a liquidation, rehabilitation, or supervision proceeding involving the impaired or *insolvent* insurer, upon the termination of the impairment or *insolvency* of the insurer, or upon the order of a court of competent jurisdiction. ~~Nothing in this section shall~~ *does not* limit the duty of the association to render a report of its activities under 33-10-209."

Section 8. Section 33-10-207, MCA, is amended to read:

"33-10-207. Immunity. There ~~shall~~ *may not be* ~~no~~ *any* liability on the part of and ~~no~~ *there may not be* a cause of action of any nature ~~shall~~ *arise* against any member insurer or its ~~insurance producers~~ *agents* or employees, the association or its ~~insurance producers~~ *the association's agents* or employees, members of the board of directors, or the commissioner or ~~his~~ *the commissioner's* representatives for any action taken by them in the performance of their powers and duties under this part."

Section 9. Section 33-10-210, MCA, is amended to read:

"33-10-210. Unfair trade practice — notice to policyholders policyowners. (1) It is a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this part in the sale of insurance.

(2) ~~Within 180 days after October 1, 1993, the~~ *The* association shall prepare a summary document, complying with subsection (3) and describing the general purposes and current limitations of this part. The document must be submitted to the commissioner for approval. Sixty days after receiving approval, an insurer may not deliver a policy or contract described in 33-10-201(4) to a ~~policy policyowner or contract holder owner~~ *policy policyowner or contract holder owner* unless the document is delivered to the ~~policy policyowner or contract holder owner~~ *policy policyowner* prior to or at the time of delivery of the policy or contract, unless subsection (4) *of this section* applies. The document must be available upon request by a ~~policyholder policyowner~~ *policyowner*. The distribution, delivery, contents, or interpretation of this document does not mean that either the policy or the contract or the ~~holder owner~~ *holder owner* of the policy or contract would be covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this part may require. Failure to receive this document does not give the ~~policyholder policyowner, contract holder owner, certificate holder, or insured~~ *policyowner, contract holder owner, certificate holder, or insured* any greater rights than those stated in this part.

(3) The document prepared under subsection (2) must contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer must:

(a) state the name and address of the life and health insurance guaranty association and insurance department;

(b) prominently warn the ~~policy policyowner or contract holder owner~~ *policy policyowner or contract holder owner* that the life and health insurance guaranty association may not cover the policy or, if

coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(c) state that the insurer and its insurance producers are prohibited by law from using the existence of the life and health insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(d) emphasize that the ~~policy~~ *policyowner* or contract ~~holder~~ *owner* should not rely on coverage under the life and health insurance guaranty association when selecting an insurer;

(e) provide other information as directed by the commissioner.

(4) An insurer or insurance producer may not deliver a policy or contract described in 33-10-201(4) and excluded under 33-10-201(6)(a) ~~(10)~~ from coverage under this part unless the insurer or insurance producer, prior to or at the time of delivery, gives the ~~policy~~ *policyowner* or contract ~~holder~~ *owner* a separate written notice that clearly and conspicuously discloses that the policy or contract is not covered by the life and health insurance guaranty association.

(5) The commissioner shall by rule specify the form and content of the notice required under subsection (4)."

Section 10. Section 33-10-215, MCA, is amended to read:

"33-10-215. Duties and powers of the commissioner. In addition to the duties and powers enumerated elsewhere in this part, the commissioner shall:

(1) notify the board of directors of the existence of an impaired *or insolvent* insurer not later than 3 days after a determination of impairment *or insolvency* is made or ~~he~~ *the commissioner* receives notice of impairment *or insolvency*;

(2) upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;

(3) when an impairment *or insolvency* is declared and the amount of the impairment *or insolvency* is determined, serve a demand upon the impaired *or insolvent* insurer to make good the impairment *or insolvency* within a reasonable time. Notice to the impaired *or insolvent* insurer ~~shall constitute~~ *constitutes* notice to its shareholders, if any. The failure of the insurer to promptly comply with ~~such~~ *the demand* ~~shall~~ *does not* excuse the association from the performance of its powers and duties under this part.

(4) in any liquidation or rehabilitation proceeding involving a domestic insurer be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner ~~shall~~ *must* be appointed conservator.

(5) *The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer that fails to pay an assessment when due. The fine may not exceed 5% of the unpaid assessment per month, except that the fine may not be less than \$100 per month.*

(6) *A final action of the board of directors may be appealed to the commissioner by a member insurer if the appeal is taken within 60 days of the member insurer's receipt of notice of the final action being appealed. A final*

action or order of the commissioner is subject to judicial review in a court of competent jurisdiction in accordance with the laws of this state that apply to the actions or orders of the commissioner.

(7) The liquidator or rehabilitator of an impaired or insolvent insurer may notify all affected persons of the effect of this part."

Section 11. Section 33-10-217, MCA, is amended to read:

"33-10-217. Prevention of insolvencies or impairments. (1) To aid in the detection and prevention of insurer insolvencies or impairments, the commissioner shall:

(a) (i) notify the commissioners of all the other states, the territories of the United States, and the District of Columbia when the commissioner takes any of the following actions against a member insurer:

(A) the revocation of a license;

(B) the suspension of a license; or

(C) the issuance of any formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of ~~policyholders~~ *policyowners* or creditors;

(ii) mail the notice to all commissioners within 30 days following the action taken or the date on which the action occurs;

(b) report to the board of directors when the commissioner has taken any of the actions set forth in subsection (1)(a) or has received a report from any other commissioner indicating that an action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the report received from another commissioner.

(c) report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that the company may be an impaired or insolvent insurer; and

(d) furnish to the board of directors the national association of insurance commissioners' insurance regulatory information system (IRIS) ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners. The board of directors may use the information contained in the ratios and listings in carrying out its duties and responsibilities under this section. The report and the information contained in the ratios and listings must be kept confidential by the board of directors until the time it is made public by the commissioner or other lawful authority.

(2) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(3) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(4) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations.

(5) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer *or germane to the solvency of any company seeking to provide life or health insurance in this state*. The reports and recommendations are not considered public documents.

(6) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments *or insolvencies*.

(7) The board of directors shall, at the conclusion of any insurer impairment *or insolvency* in which the association carried out its duties under this part or exercised any of its powers under this part, prepare a report on the history and causes of the impairment *or insolvency*, based on the information available to the association, and submit the report to the commissioner. The board of directors shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of *impairment or insolvency* of a particular insurer and may adopt by reference any report prepared by other associations.”

Section 12. Section 33-10-219, MCA, is amended to read:

“33-10-219. Impaired insurer — association’s powers prior to liquidation. If ~~an~~ a member insurer is an impaired insurer, the association may, ~~prior to an order of liquidation or rehabilitation and~~ subject to any conditions imposed by the association other than those ~~which~~ *that* impair the contractual obligations of the impaired insurer and *that are* approved by the ~~impaired insurer and the commissioner:~~

(1) guarantee, *assume*, or reinsure or cause to be guaranteed, assumed, or reinsured all the covered policies of the impaired insurer; *or*

(2) provide ~~such moneys~~ *money*, pledges, notes, guarantees, or other means ~~as that~~ are proper to effectuate this section and ~~assure~~ *ensure* payment of the contractual obligations of the impaired insurer pending action under ~~subsection (1); and this section.~~

~~(3) loan money to the impaired insurer.”~~

Section 13. Section 33-10-220, MCA, is amended to read:

“33-10-220. Impaired Insolvent insurer — association’s powers during liquidation. (1) If an insurer is an ~~impaired insolvent~~ *insolvent* insurer ~~under an order of liquidation or rehabilitation~~, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of the ~~impaired insolvent~~ insurer;

(b) ~~assure~~ *ensure* payment of the contractual obligations of the ~~impaired insolvent~~ insurer; and

~~(c) provide such moneys~~ *money*, pledges, notes, guarantees, or other means ~~as that~~ are reasonably necessary to discharge ~~such~~ *its* duties; *or*

(c) provide benefits and coverages in accordance with the provisions of subsection (6).

(2) If the association fails to act within a reasonable period of time, the commissioner ~~shall have~~ *has* the powers and duties of the association under this

part with respect to ~~such~~ a domestic, foreign, or alien ~~impaired~~ *insolvent* insurer.

(3) In carrying out its duties under subsection (1), the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means; and ~~such~~ *the* liens, moratoriums, or similar means may be imposed if the commissioner:

(a) finds that the amounts ~~which that~~ can be assessed under this part are less than the amounts needed to ~~assure~~ *ensure* full and prompt performance of the ~~impaired~~ *insolvent* insurer's contractual obligations or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(b) approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

(4) Before being obligated under subsection (1), the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans, and ~~such~~ *the* temporary moratoriums and liens may be imposed if they are approved by the commissioner.

(5) The association ~~shall have no liability~~ *is not liable* under 33-10-219 or this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute or regulation for residents of this state protection substantially similar to that provided by this part for residents of other states.

(6) (a) If proceeding under this section, the association may, with respect to life and health insurance policies *and annuities*

(i) ~~assure~~ *ensure* payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer for claims incurred:

(A) with respect to group policies *or contracts*, not later than the earlier of the next renewal date under the policy or contract or 45 days, but in ~~no~~ *any* event *not* less than 30 days, after the date on which the association becomes obligated with respect to the policies *or contracts*;

(B) with respect to individual policies *or contracts*, not later than the earlier of the next renewal date, if any, under the policies *or contracts* or 1 year, but in ~~no~~ *any* event *not* less than 30 days, from the date on which the association becomes obligated with respect to the policies *or contracts*;

(ii) make diligent efforts to provide all known insureds, *annuitants*, or group ~~policyholders~~ *policyowners* with respect to group policies, 30 days' notice of the termination of the benefits provided; and

(iii) make available substitute coverage on an individual basis in accordance with subsection (6)(b) to each known insured *or annuitant*, or owner if other than the insured *or annuitant*, of an individual policy *or contract* and to any individual formerly insured under a group policy who is not eligible for replacement group coverage, if the insured *or annuitant* had a right under law or the terminated policy *or contract* to convert coverage to individual coverage or to continue an individual policy *or annuity* in force until a specified age or for a specified time during which the insurer had no right unilaterally to make

changes in any provision of the policy or had a right only to make changes in premium by class.

(b) (i) In providing the substitute coverage required under subsection (6)(a)(iii), the association may offer to reissue the terminated coverage or issue an alternative policy.

(ii) Reissued or alternative policies must be offered without requiring evidence of insurability and may not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(iii) The association may reinsure any reissued or alternative policy.

(c) (i) Alternative policies adopted by the association are subject to the approval of the commissioner. The association may adopt *alternative* policies of various types for future ~~reissuance~~ *issuance* without regard to any particular impairment or insolvency.

(ii) Alternative policies must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten.

(iii) Alternative policies issued by the association shall provide coverage of a type similar to that of the policy issued by the ~~impaired or~~ insolvent insurer, as determined by the association.

(d) If the association elects to reissue terminated coverage at a premium different from that charged under the terminated policy, the premium must be set by:

(i) the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner; or

(ii) a court of competent jurisdiction.

(e) The association's obligation with respect to coverage under any policy or contract of the ~~impaired or~~ insolvent insurer or under any reissued or alternative policy ceases on the date the coverage or policy is replaced by another similar policy by the ~~policyholder~~ *policyowner*, insured, or association.

(f) When proceeding under this section with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall ensure the payment or crediting of a rate of interest consistent with 33-10-201(10).

(7) In carrying out its duties under this section, the association may, subject to the approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

(a) in lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for:

(i) a fixed interest rate;

(ii) payment of dividends with minimum guarantees; or

(iii) a different method for calculating interest or changes in value;

(b) *there is not a requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract; and*

(c) *the alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.*

(8) *Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under this part with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value that may be due in accordance with the provisions of this part.*

(9) *Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable only for unearned premiums due to policyowners or contract owners arising after the entry of the order of liquidation.*

(10) *The protection provided by this part does not apply when any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the insolvent insurer that is other than this state."*

Section 14. Section 33-10-221, MCA, is amended to read:

"33-10-221. Nomination of liquidator by association — notification given by liquidator. (1) The association may recommend ~~a natural person~~ *an individual* to serve as a special deputy to act for the commissioner and ~~under his~~ *under the commissioner's* supervision in the liquidation, rehabilitation, or supervision of any member insurer.

(2) The liquidator, rehabilitator, or supervisor of any impaired *or insolvent* insurer may notify all interested persons of the effect of this part."

Section 15. Section 33-10-222, MCA, is amended to read:

"33-10-222. Stay of proceedings — reopening default judgments. (1) All proceedings in which the impaired *or insolvent* insurer is a party in any court in this state ~~shall~~ *must* be stayed 60 days from the date an order of liquidation, rehabilitation, or supervision is final to permit proper legal action by the association on any matters germane to its powers or duties.

(2) As to a judgment under any decision, order, verdict, or finding based on default, the association may apply to have ~~such~~ *the* judgment set aside by the same court that made ~~such~~ *the* judgment and ~~shall~~ *must* be permitted to defend against ~~such~~ *the* suit on the merits."

Section 16. Section 33-10-223, MCA, is amended to read:

"33-10-223. Assignment by beneficiaries — subrogation. (1) Any person receiving benefits under this part ~~shall~~ *must* be ~~deemed~~ *considered* to have assigned ~~his~~ *the person's* rights under the covered policy *or contract, pertaining to any causes of action against the person for losses resulting from or otherwise relating to the covered policy or contract,* to the association to the extent of the benefits received because of this part whether the benefits are payments of contractual obligations or continuation of coverage *or provision of substitute or alternative coverage.* The association may require an assignment to it of ~~such~~ *the* rights by any payee, ~~policy~~ *policyowner* or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this part upon ~~such~~ *the* person. The association

~~shall~~ must be subrogated to these rights against the assets of any impaired insurer.

(2) The subrogation rights of the association under this section ~~shall~~ have the same priority against the assets of the impaired insurer as that possessed by the person entitled to receive benefits under this part.

(3) *In addition to the rights detailed in this section, the association has all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this part, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity, except for any person responsible solely by reason of serving as an assignee with respect to a qualified assignment under section 130 of the Internal Revenue Code.*

(4) *If subsections (1) through (3) are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations must be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policy or a portion of the policy covered by the association.*

(5) *If the association has provided benefits with respect to a covered obligation and a person recovers any amount to which the association has rights as described in this section, the person shall pay to the association the portion of the recovery attributable to the policy or a portion of the policy covered by the association.”*

Section 17. Section 33-10-224, MCA, is amended to read:

“33-10-224. Extent of liability. (1) The benefits for which the association may become liable may not exceed the lesser of:

~~(1)~~(a) the contractual obligations of the impaired or *insolvent* insurer for which the insurer becomes or would have become liable if it were not an impaired or insolvent insurer; or

~~(2)~~(a)(b) (i) *except as provided in subsection (2)*, with respect to any one life, regardless of the number of policies or contracts:

~~(i)~~(A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;

~~(ii)~~(B) \$100,000 in health insurance benefits;

(I) \$500,000 for basic hospital, medical, and surgical insurance or major medical insurance as defined in the covered policy or contract;

(II) \$300,000 for disability insurance as defined in the covered policy or contract;

(III) \$100,000, including any net cash surrender and net cash withdrawal values, for coverages not included in (1)(b)(i)(B)(I) and (1)(b)(i)(B)(II);

~~(iii)~~(C) \$100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

~~(b)~~(ii) with respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code and covered by an unallocated annuity contract or with respect to the beneficiaries of each individual, if deceased, in the aggregate, \$100,000 in

present value annuity benefits, including net cash surrender and net cash withdrawal values; ~~However, the association is not liable to expend more than \$300,000 in the aggregate with respect to any one individual under subsection (2)(a) and this subsection.~~

~~(c)(iii)~~ with respect to any one contract ~~holder~~ owner covered by any unallocated annuity contract not included in subsection ~~(2)(b)~~ (1)(b)(ii), \$5 million in benefits, irrespective of the number of contracts held by that contract ~~holder~~ owner;

(iv) with respect to each payee of a structured settlement annuity or beneficiary of the payee if the payee is deceased, \$100,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(v) with respect to either one contract owner provided coverage under 33-10-201(6) or one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in subsection (1)(b)(ii), \$5 million in benefits, irrespective of the number of contracts held by the contract owner or plan sponsor. If one or more unallocated annuity contracts are covered contracts under this part and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage must be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state, and in any event, the association is not obligated to cover more than \$5 million in benefits with respect to all these unallocated contracts.

(2) The association is not obligated to cover more than:

(a) an aggregate of \$300,000 in benefits with respect to any one life under subsections (1)(b)(i), (1)(b)(ii), and (1)(b)(iii), except with respect to benefits for basic hospital, medical, and surgical insurance and major medical insurance under subsection (1)(b)(i), in which case the aggregate liability of the association may not exceed \$500,000 with respect to any one individual; and

(b) with respect to one owner of multiple nongroup policies of life insurance, whether the policyowner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, \$5 million in benefits, regardless of the number of policies and contracts held by the owner.

(3) The limitations set forth in this section are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this part may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(4) In performing its obligations to provide coverage under this part, the association is not required to guarantee, assume, reinsure, or perform or cause to be guaranteed, assumed, reinsured, or performed the contractual obligations of the impaired or insolvent insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract."

Section 18. Section 33-10-226, MCA, is amended to read:

"33-10-226. Distribution of ownership rights — distribution to shareholders. (1) Prior to the termination of any liquidation, rehabilitation, or

supervision proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyowners of the impaired *or insolvent* insurer and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of ~~such~~ the impaired *or insolvent* insurer. In ~~such a~~ the determination, consideration ~~shall~~ *must* be given to the welfare of the ~~policyholders~~ *policyowners* of the continuing or successor insurer.

(2) ~~No~~ A distribution to stockholders, if any, of an impaired *or insolvent* insurer ~~shall~~ *may not* be made until and unless the total amount of assessments levied by the association with respect to ~~such~~ the insurer have been fully recovered by the association.”

Section 19. Section 33-10-227, MCA, is amended to read:

“33-10-227. Assessments — abatement — basis for ratesetting. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at the times and for the amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There are two classes of assessments, as follows:

(a) Class A assessments must be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired *or insolvent* insurer.

(b) Class B assessments must be made to the extent necessary to carry out the powers and duties of the association under 33-10-219 and 33-10-220~~(4)~~ with regard to an impaired *or insolvent* insurer.

(3) (a) The amount of any Class A assessment for each account must be determined by the board. The amount of any Class B assessment must be divided among the accounts in the proportion that the premiums received by the impaired *or insolvent* insurer on the policies covered by each account bear to the premiums received by the insurer on all covered policies.

(b) Class B assessments against member insurers for each account must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to the premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired *or insolvent* insurer may not be made until necessary to implement the purposes of this part. Classification of assessments under subsection (2) and computation of assessments under this subsection must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account may not in any ~~one~~ 1 calendar year exceed 2% of the insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which the assessment is abated or deferred must be assessed

against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any ~~one~~ 1 year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon ~~thereafter~~ after that year as permitted by this part.

(6) If a 1% assessment for any subaccount of the life insurance account and the annuity account in any 1 year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (3)(b), the board shall assess all subaccounts of the life insurance account and the annuity account for the necessary additional amount, subject to the maximum assessment stated in subsection (4).

(7) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(8) It is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(9) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount paid. All outstanding certificates must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in that form and for the amount, if any, and period of time that the commissioner may approve."

Section 20. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 10, part 2, and the provisions of Title 33, chapter 10, part 2, apply to [sections 1 and 2].

Section 21. Effective date. [This act] is effective July 1, 2003.

Approved April 1, 2003

CHAPTER NO. 196

[HB 174]

AN ACT GENERALLY REVISING PROFESSIONAL OCCUPATION AND LICENSING LAWS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY MAY, WITH RESPECT TO CERTAIN LICENSING EXAMINATIONS, ALLOW THIRD PARTIES TO PROVIDE EXAMINATION AND GRADING SERVICES; REVISING EXAMINATION AND CERTIFICATE REQUIREMENTS FOR SANITARIANS; REVISING OUTFITTER LICENSES FOR CORPORATIONS, PROPRIETORSHIPS, AND PARTNERSHIPS; REVISING EDUCATION, CERTIFICATION, AND EXAMINATION REQUIREMENTS FOR PUBLIC ACCOUNTANTS;

REVISING EXAMINATION REQUIREMENTS FOR REAL ESTATE BROKERS AND SALESPERSONS; REVISING APPLICATION, EXAMINATION, AND CERTIFICATION REQUIREMENTS FOR REAL ESTATE APPRAISERS; REVISING EXAMINATION REQUIREMENTS FOR ARCHITECTS; REVISING APPLICATION, FEE, AND EXAMINATION REQUIREMENTS FOR ENGINEERS AND LAND SURVEYORS; REVISING FEE AND EXAMINATION REQUIREMENTS FOR ELECTRICIANS; REVISING FEE AND EXAMINATION REQUIREMENTS FOR PLUMBERS; REVISING APPLICATION, FEE, AND LICENSE REQUIREMENTS FOR CONSTRUCTION BLASTERS; REVISING EXAMINATION AND FEE REQUIREMENTS FOR PERSONS OPERATING BOILERS AND STEAM ENGINES; REVISING EXAMINATION AND FEE REQUIREMENTS FOR PERSONS OPERATING HOISTING ENGINES; AMENDING SECTIONS 37-40-302, 37-47-304, 37-50-204, 37-50-305, 37-50-308, 37-50-309, 37-51-303, 37-54-105, 37-54-201, 37-54-302, 37-54-305, 37-65-303, 37-67-303, 37-67-311, 37-68-304, 37-68-305, 37-68-307, 37-68-311, 37-69-304, 37-69-305, 37-69-307, 37-72-303, 37-72-304, 37-72-305, 50-74-312, AND 50-76-104, MCA; AND REPEALING SECTIONS 37-54-304 AND 50-74-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-40-302, MCA, is amended to read:

“37-40-302. Application — examination — certificate. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must ~~possess~~ have a minimum of a bachelor’s degree in environmental health or its equivalent from an accredited university or college and ~~must shall pass a written~~ an examination given at a time and place set by the board. The board shall establish procedures for examination and determination of passing scores by rule.

(3) If the applicant meets the board’s standards and passes the examination prescribed by the board, the department shall issue a certificate of registration ~~upon payment of the required fee.~~

(4) Holders of current certificates are entitled to append to their name the initials “R.S.”.

Section 2. Section 37-47-304, MCA, is amended to read:

“37-47-304. Application. (1) Each applicant for an outfitter’s, guide’s, or professional guide’s license shall ~~make application~~ apply for a license on a form prescribed and furnished by the board.

(2) The application for an outfitter’s license forms the basis for the outfitter’s operations plan and must include:

(a) the applicant’s full name, residence, address, conservation license number, driver’s license number, birth date, physical description, and telephone number;

(b) the address of the applicant’s principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including:

(i) years of experience as an outfitter, guide, or professional guide;

(ii) the applicant's knowledge of areas in which the applicant has operated and intends to operate; and

(iii) the applicant's ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter for each guide and professional guide to be employed or retained as an independent contractor, stating that the guide or professional guide is to be employed by the outfitter and stating that the outfitter recommends the guide or professional guide for licensure;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

(g) a statement of the maximum number of participants to be accompanied at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands the applicant will provide services or establish hunting camps; and

(i) the boundaries of the proposed operation, stating when applicable:

(i) the name and portion of river;

(ii) the county of location;

(iii) the legal owner of the property;

(iv) the name of the ranch;

(v) the proposed service, including the type of game sought;

(vi) the name of the agency granting use authority; and

(vii) other means of identifying boundaries as established by board rule.

(3) Applications for an outfitter's license must be in the name of an individual person only. Applications involving corporations, proprietorships, or partnerships must be made by one individual person who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name of that person. ~~The license must specifically state that the license is issued for the use and benefit of the named corporation, proprietorship, or partnership involved.~~ Any revocation or suspension of a license is binding upon the individual person and the corporation, proprietorship, or partnership for the use and benefit of which the license was originally issued.

(4) Application must be made to and filed with the board.

(5) Only one application for an outfitter's license may be made in any license year. If an application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

Section 3. Section 37-50-204, MCA, is amended to read:

"37-50-204. Rulemaking powers relating to reexaminations examinations. The board ~~shall have power to prescribe by uniform rule~~ may adopt rules for the following:

(1) the terms and conditions under which a candidate ~~who passes one or more subjects of examination may be reexamined in only the remaining subjects, with credit for the subjects previously passed~~ shall obtain credit for passing the required examination or portions of the examination;

~~(2) a reasonable waiting period for a candidate's reexamination in a subject he has failed the period of time that candidates are allowed to apply for reexamination; and~~

~~(3) the maximum number of reexaminations for which a candidate may apply;~~

~~(4)(3) the fees to be charged each candidate for initial examinations and special examinations, which shall must be commensurate with costs. With respect to reexaminations, a fee commensurate with costs may be charged for each subject in which the candidate is reexamined."~~

Section 4. Section 37-50-305, MCA, is amended to read:

"37-50-305. Education requirements. (1) ~~Prior to July 1, 1997, a candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:~~

~~(a) with a concentration in accounting; or~~

~~(b) with a concentration other than accounting if supplemented by experience or by related courses in other areas of business administration and the board determines that an equivalent education has been achieved.~~

~~(2) Beginning July 1, 1997, a candidate for initial certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:~~

~~(a) with an accounting concentration or its equivalent as determined by the board; and~~

~~(b) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent.~~

~~(2) For the purposes of this section, "initial certification" means that the candidate has never been certified as a certified public accountant or licensed as a licensed public accountant by any jurisdiction."~~

Section 5. Section 37-50-308, MCA, is amended to read:

"37-50-308. Examination. Except as provided in 37-1-101(4), the department shall ~~administer provide for~~ an examination in accounting, auditing, and related subjects as the board ~~determines considers~~ appropriate. The grade determination of the board is final in each case. The ~~department on behalf of the~~ board may ~~use the examination and grading services of the American institute of certified public accountants or other contract with third parties to perform provide the~~ examination and administrative services related to the examination. ~~The examination must be held at least annually and at other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination."~~

Section 6. Section 37-50-309, MCA, is amended to read:

"37-50-309. Credit for examinations taken in other states jurisdictions. The board may by rule provide for granting credit to a candidate for ~~his the~~ satisfactory completion of ~~a written an~~ examination in any one or more of the subjects of examination given by the licensing authority in another ~~state jurisdiction. These rules shall include requirements the board determines appropriate in order that an examination approved as a basis for credit is, in the~~

judgment of the board, at least as thorough as that included in the examination given in this state at the time the credit originally was granted by the other state for passing the examination.”

Section 7. Section 37-51-303, MCA, is amended to read:

“37-51-303. Broker or salesperson examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is ~~then~~ pending shall satisfactorily pass ~~a written~~ *an* examination ~~prepared prescribed~~ by or under the supervision of the board. The examination ~~shall must~~ be given at least once each 6 months and at places within the state ~~that~~ the board prescribes.

(2) (a) The examination for a salesperson’s license ~~shall must~~ include: *subject portions that the board determines by rule to be appropriate.*

~~(i) business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal;~~

~~(ii) a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and of this chapter.~~

(b) If the applicant passes one subject portion of the examination, ~~(2)(a)(i) or (2)(a)(ii), he shall not be the applicant is not~~ required to repeat that portion of the examination if ~~he~~ *the applicant* passes the remaining portion within 12 months.

(3) The examination for a broker’s license ~~shall must~~ be of a more exacting nature and scope and more stringent than the examination for a salesperson’s license.”

Section 8. Section 37-54-105, MCA, is amended to read:

“37-54-105. Powers and duties of board. The board shall:

(1) adopt rules to implement and administer the provisions of this chapter;

(2) establish and collect fees commensurate with the costs of *processing an application for* licensure and certification and renewal of a license or certificate;

(3) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;

~~(4) receive applications for examination from qualified applicants, prescribe and administer examinations to qualified applicants, prescribe the examinations for licensure or certification, and determine the acceptable level of performance on examinations;~~

(5) receive and review applications for licensure and certification and issue licenses and certificates;

(6) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;

(7) retain all applications and other records submitted to it;

(8) adopt by rule standards of professional appraisal practice in this state;

(9) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers; and

(10) perform other duties necessary to implement this chapter.”

Section 9. Section 37-54-201, MCA, is amended to read:

“37-54-201. Real estate appraiser license — scope and display of license. (1) Upon proof that an applicant meets the qualifications set out in 37-54-202 and upon payment of license fees adopted under 37-54-105, the board shall issue to the applicant a real estate appraiser license.

(2) The term “licensed real estate appraiser” may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual licensee. However, a licensed real estate appraiser may engage in real estate appraisal as a professional corporation.

(3) This chapter does not preclude a person who is not a licensed or certified real estate appraiser from appraising real property for transactions not related to a federal agency or project for compensation, provided that if the person does not purport to be a licensed or certified real estate appraiser. A person who purports that the person or the person’s company is licensed under this section or certified under 37-54-302 through 37-54-304 and 37-54-303 without possessing the applicable license or certificate is guilty of a misdemeanor.

(4) This section does not:

(a) prohibit a person who is licensed to practice in this state under any law from engaging in the practice for which the person is licensed;

(b) apply to public officials in the conduct of their official duties that are not governed by the rules established by the federal financial institutions examination council agencies.

(5) A licensed or certified real estate appraiser is subject to restrictions on the scope of practice, depending on the value and complexity of the federally related transaction or transactions pursuant to rules established by the federal financial institutions examination council agencies, and the restrictions must remain current with any changes in those rules.

(6) A licensed real estate appraiser shall conspicuously display the license in the appraiser’s principal place of business.”

Section 10. Section 37-54-302, MCA, is amended to read:

“37-54-302. Certification process — fees. (1) An application for ~~for examination~~ for certification, original certification, or renewal of certification must be made in writing to the board on forms approved by the board.

(2) A fee established by the board by rule must accompany the application.

(3) When an applicant files an application for original certification or renewal of certification, the applicant shall sign a pledge to comply with the standards of professional appraisal practice established for certified real estate appraisers under 37-54-403 and affirm that the applicant understands the types of misconduct for which disciplinary action may be initiated under 37-1-308.

(4) To be eligible for original certification as a real estate appraiser, an applicant shall:

(a) specify the class or classes of certification for which the applicant is applying and provide evidence satisfactory to the board that the applicant has the education required for the class or classes of certification for which application is made; and

(b) pass an examination prescribed by the board.

(5) A certificate issued under 37-54-305 must bear the signatures or facsimile signatures of the members of the board and a certificate number assigned by the board.”

Section 11. Section 37-54-305, MCA, is amended to read:

“37-54-305. Issuance and display of certificate. (1) The board shall issue a certificate and a pocket card to a person who meets the requirements of 37-54-302 ~~through 37-54-304 and 37-54-303.~~

(2) The certificate must include the dates of issuance and renewal of certification.

(3) A certified real estate appraiser shall conspicuously display the certificate in the appraiser’s principal place of business.

(4) A certified real estate appraiser shall designate the class for which the appraiser is certified and place the certificate number on each appraisal report, contract, or other instrument that the appraiser uses in conducting real estate appraisal activities.”

Section 12. Section 37-65-303, MCA, is amended to read:

“37-65-303. Application — examination — issuance of license. (1) A person wishing to practice architecture in this state shall apply to the department for a license. A person applying must have successfully completed the requirement of prerequisites in education and practical experience and ~~a written~~ *an* examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination, the department shall, if the candidate has been found qualified, grant a license to the candidate to practice architecture in this state, ~~which may be granted only on the consent of not less than two members of the board.”~~

Section 13. Section 37-67-303, MCA, is amended to read:

“37-67-303. Application — contents — fees. (1) Applications for licensure must be on forms prescribed by the board and furnished by the department, must contain statements made under oath showing the applicant’s education and a detailed summary of the applicant’s technical work, and must contain the required references.

(2) The *application* fee for an engineer intern is as prescribed by the board, ~~and must accompany the application, and must include the cost of one examination.~~ An additional fee is not required for the issuance of a certificate.

(3) The application fee for licensure as a professional engineer is as prescribed by the board for those holding an engineer intern certificate validated for Montana. For those holding a valid engineer intern certificate from some other state, the application fee is as prescribed by the board, which includes the cost of verification of engineer intern certification or licensure ~~and one examination.~~ Upon approval of an application for licensure ~~and passage of the required examination~~ as a professional engineer, ~~an additional fee equal to the existing renewal fee must be paid before the issuance of the department shall~~ *issue* a license as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application, ~~and payment of a~~ *an application* fee as prescribed by the board, ~~and payment of an additional fee equal to the appropriate renewal fee,~~ issue a license as a professional engineer to a person who holds a certificate of qualification or licensure issued to the person by the committee on national engineering certification of the national council of examiners for engineering

and surveying or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The *application* fee for a land surveyor intern is as prescribed by the board, ~~which and must accompany the application and must include the cost of one examination.~~ An additional fee is not required for issuance of a certificate.

(6) The application fee for licensure as a professional land surveyor is as prescribed by the board for those holding a land surveyor intern certificate validated in Montana. For those holding a valid land surveyor intern certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of an application for licensure as a professional land surveyor *and passage of the required examination*, ~~an additional fee equal to the existing renewal fee must be paid before the issuance of the department shall issue~~ a license as a professional land surveyor.

(7) The application fee for licensure as both a professional engineer and professional land surveyor is as prescribed by the board for those holding engineer intern and land surveyor intern certificates validated in Montana. For those holding valid engineer intern and land surveyor intern certificates from another jurisdiction, the application fee is as prescribed by the board. The fee must accompany the application. Upon approval of an application for licensure as a professional engineer and professional land surveyor *and passage of the required examinations*, ~~an additional fee equal to the existing renewal fee must be paid before the issuance of the department shall issue~~ a license.

(8) If the board denies the issuance of a license to any applicant, the initial fee deposited must be retained as an application fee."

Section 14. Section 37-67-311, MCA, is amended to read:

"37-67-311. Examinations — fees — third-party services. Examination requirements are as follows:

(1) The examinations must be held at times and places that the board directs. The board shall determine the acceptable grade on examinations.

(2) *The board shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.*

(3) *The board may use a third party to provide examination and grading services.*

~~(2)(4) Written examinations~~ *Examinations* may be taken only after the applicant has met the other minimum requirements as provided in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination. Passing the examination qualifies the examinee for an engineer intern certificate if the examinee has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for licensure as a professional engineer if the examinee has met the other requirements for licensure required by this chapter.

(c) The examinations for land surveyor intern consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor intern certificate if the examinee has met all other requirements for certification required by this chapter.

(d) The requirements and examinations for professional land surveyor consist of being a land surveyor intern, two examinations, designated as parts III and IV, on the applied disciplines of land surveying, and an examination specifically related to land surveying in Montana. Passing these examinations qualifies the examinee for licensure as a professional land surveyor if the examinee has met the other requirements for licensure required by this chapter.

~~(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee shall wait 1 year before a third examination.~~

~~(4) A candidate failing three examinations may not be allowed readmission to the examination. The candidate may apply for a special circumstance waiver from the board to be readmitted to the examination."~~

Section 15. Section 37-68-304, MCA, is amended to read:

"37-68-304. Master electricians — application — qualifications — contents of examination — fees. (1) An applicant for a master electrician's license shall furnish written evidence ~~that he is of being~~ a graduate electrical engineer of an accredited college or university and ~~has of having~~ 1 year of practical electrical experience or that ~~he~~ *the applicant* is a graduate of an electrical trade school and has at least 4 years of practical experience in electrical work or ~~that he~~ has had at least ~~5 years'~~ *years of* practical experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power.

(2) Applicants for license as a master electrician shall file an application on forms prescribed by the board and furnished by the department, ~~together with the examination fee.~~ The board shall, not less than 30 days prior to a scheduled ~~written~~ examination, notify each applicant that the evidence submitted with ~~his~~ *the applicant's* application is sufficient to qualify ~~him~~ to take the ~~written~~ examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant ~~and shall authorize the department to return the applicant's examination fee.~~ The place of examinations ~~shall~~ *must* be designated by the board, and examinations ~~shall~~ *must* be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.

(3) The ~~written~~ examination ~~shall~~ *must* consist of at least 30 questions designed to fairly test the applicant's knowledge and ~~his~~ *the applicant's* technical application in ~~the following subjects:~~ *the following subjects:*

- (a) *the national electric code;*
- (b) *cost estimating for electrical installments;*
- (c) *procurement and handling of materials needed for electrical installations and repair;*
- (d) *reading blueprints for electrical work;*
- (e) *drafting and layout of electrical circuits; and*

(f) knowledge of practical electrical theory.

~~(a) the national electrical code;~~

~~(b) cost estimating for electrical installments;~~

~~(c) procurement and handling of materials needed for electrical installations and repair;~~

~~(d) reading of blueprints for electrical work;~~

~~(e) drafting and layout of electrical circuits;~~

~~(f) knowledge of practical electrical theory.~~

(4) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs."

Section 16. Section 37-68-305, MCA, is amended to read:

"37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a journeyman electrician's license shall furnish written evidence ~~that he has had~~ of at least 4 years' apprenticeship in the electrical trade or 4 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant ~~shall~~ must be made and given as in the case of master electricians' licenses. The ~~written~~ examination for a journeyman's license ~~shall~~ must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application ~~thereof in the following subjects:~~ in the following subjects:

(a) the Ohm's law;

(b) the national electric code; and

(c) layout and practical installation of electrical circuits.

~~(a) the Ohm's law;~~

~~(b) the national electrical code;~~

~~(c) layout and practical installation of electrical circuits.~~

(2) An applicant for a residential electrician's license shall furnish written evidence ~~that he has had~~ of at least 2 years' apprenticeship in the electrical trade or 2 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. Application for license and notice to the applicant ~~is~~ must be made and given as in the case of master electricians' licenses. The ~~written~~ examination for a residential electrician's license ~~consists~~ must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application ~~thereof in the following subjects:~~ in the following subjects:

(a) the Ohm's law;

(b) the national electric code; and

(c) layout and practical installation of electrical circuits.

~~(a) the Ohm's law;~~

~~(b) the national electrical code;~~

~~(c) layout and practical installation of electrical circuits in residential construction consisting of less than five living units in a single structure."~~

Section 17. Section 37-68-307, MCA, is amended to read:

“37-68-307. Examination procedure — third-party services — issuance of master, journeyman, or residential electrician’s license — expiration. (1) To ensure impartiality, the examination for either the residential, master’s, or journeyman’s license must be by numbers drawn by lot. ~~A paper may not be marked with the name of an applicant, but must be anonymously graded~~ administered by the department. *The department may use a third party to provide examination and grading services.* The examination passing grade is 75%.

(2) If it is determined that the applicant has passed the examination, the department, ~~on payment by the applicant of the fee,~~ shall issue to the applicant a license that authorizes the licensee to engage in the business, trade, or calling of a residential electrician, journeyman electrician, or master electrician.

(3) ~~Unless otherwise provided by rules established by the department, each original license expires on a July 15 that~~ *Each original license expires on the renewal date established by the department by rule if it is not more than 3 years subsequent to after the date of issuance.”*

Section 18. Section 37-68-311, MCA, is amended to read:

“37-68-311. Examination Application fee — license fee — specific exemption for apprentices. (1) Master electricians and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by ~~this~~ electric current shall ~~make application~~ apply for a license to the department. The application must be on a form furnished by the department and must be accompanied by an ~~examination~~ application fee set by the board. The forms must state the applicant’s full name and address, the extent of work experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, ~~the applicant shall pay to the department a license fee set by the board for a master electrician’s license or for a journeyman or a residential electrician’s license, and upon receipt of the fee the department shall issue the proper license to the applicant.~~

(2) A person serving a 4-year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electrical school must be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement.

(3) In addition to the temporary permits authorized in 37-1-305, the board may, on a case-by-case basis at the board’s discretion and in accordance with criteria determined by the board, renew a temporary practice permit for a person who fails the first license examination for which the person is eligible but who submits a temporary practice permit renewal application to the board stating that the person intends to retake the license examination on the next available date.”

Section 19. Section 37-69-304, MCA, is amended to read:

“37-69-304. Qualifications of applicants for journeyman plumber’s license — restriction on authority — fees — third-party services (1) The following requirements must be met by applicants for a journeyman plumber’s license:

(a) a specific record of 5 years' experience in the field of plumbing of a character satisfactory to the board. This experience requirement may be fulfilled by working 5 years in a major phase of the plumbing business, verified by time or pay records, or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination conducted by the department, subject to 37-1-101(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing ~~and establishing by practical demonstration his competence in the special skills required in the field of plumbing and establishing by practical demonstration competence in the special skills required in the field of plumbing.~~

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

(3) *The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs.*

(4) *The department may use a third party to provide examination and grading services."*

Section 20. Section 37-69-305, MCA, is amended to read:

"37-69-305. Qualifications of applicants for master plumber's license — restriction on authority — fees — third-party services (1) The following requirements must be met by an applicant for a master plumber's license:

(a) evidence of 4 years' experience as a licensed journeyman plumber in the field of plumbing, verified by time or pay records of actual plumbing experience;

(b) evidence of 3 years' experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a); and

(c) satisfactory completion of an examination for master plumbers testing ~~his the applicant's~~ knowledge of the field of plumbing and demonstrating ~~his~~ skill and ability in the field of plumbing.

(2) For purposes of subsection (1), a year's experience is 1,500 hours or more of work in a continuous 12-month period.

(3) A master plumber may not allow ~~his the master plumber's~~ license to be used by any person or firm, corporation, or business other than ~~his the master plumber's~~ own for the purpose of obtaining permits or for doing plumbing work under ~~his the~~ license.

(4) *The board shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.*

(5) *The department may use a third party to provide examination and grading services."*

Section 21. Section 37-69-307, MCA, is amended to read:

~~“37-69-307. Examination fee and renewal fee **Renewal fees.** (1) An applicant for a master plumber’s license may not submit to the examinations prescribed by the board until the applicant has deposited with the department an examination fee prescribed by the board, and an applicant for a journeyman plumber’s license may not submit to the examination prescribed by the board until the applicant has deposited with the department an examination fee as prescribed by the board.~~

~~(2) A license when issued expires on the date established by rule of the department. A license issued to a master plumber or a journeyman plumber may be renewed without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of a fee as set by the board for renewal of a master plumber’s license or a fee as set by the board for renewal of a journeyman plumber’s license. Renewal is for the period established by the department by rule.~~

~~(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions.”~~

Section 22. Section 37-72-303, MCA, is amended to read:

“37-72-303. Licensure by examination — fee — third parties. (1) The department shall, at least once a year, administer an examination to applicants meeting the requirements of 37-72-301 and 37-72-302 and the rules adopted by the department. The department shall determine the subjects, scope, and acceptable level of performance for all examinations. The examination may be written, oral, or both. The examination ~~shall~~ **must** at a minimum test the applicant’s knowledge of the rules of the department governing construction blasting.

~~(2) An applicant for licensure by examination shall pay an examination fee to the department. The department shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.~~

~~(3) The department may use a third party to perform examination and grading services.~~

~~(3)(4) An applicant for a license who has previously taken and failed the examination required by this section may retake it at any time within 2 years without again furnishing proof of compliance with 37-72-302, upon payment to the department of a reexamination fee.”~~

Section 23. Section 37-72-304, MCA, is amended to read:

“37-72-304. Issuance of license — fee. Upon receipt of a license fee, the department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license must include the dates of issuance and expiration and a serial number. ~~It must be signed by the department.”~~

Section 24. Section 37-72-305, MCA, is amended to read:

“37-72-305. Licensure of persons licensed by other jurisdictions. Upon receipt of a license ~~an application and application~~ fee, the department shall issue a license to any person fulfilling the requirements of 37-72-301(2)(a) through (2)(d) who holds a certificate, license, or permit, issued by another state or any agency of the United States, allowing ~~him~~ **the person** to supervise or engage in the practice of construction blasting if the department finds that the

certificate, license, or permit was issued upon the satisfactory completion of requirements substantially equivalent to the requirements of 37-72-301 through 37-72-303.”

Section 25. Examinations — fees — third parties. (1) The department shall administer the engineer examinations at least once every 3 months at places within the state as determined by the department.

(2) The department shall determine the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.

(3) The department may use a third party to provide examination and grading services.

Section 26. Section 50-74-312, MCA, is amended to read:

“50-74-312. Review of license rejection. (1) An applicant for a license under the provisions of this chapter whose application has been rejected may, within 45 days after the date of the rejection, set forth in writing any arguments opposing the rejection and request a review by the department. The request must be addressed to the department and must be signed by the applicant.

(2) Within 2 days after receiving the request, the department shall notify the applicant in writing that on a certain day, not less than 5 days or more than 30 days after receipt of the written request, the department shall review and evaluate the application and any arguments opposing the rejection of the license application.

(3) The applicant may appear in person at the review. At least 2 days before the day set for the review, the applicant may designate in writing to the department of labor and industry the name of an engineer holding a valid license of equal or higher grade than the one applied for, and the engineer may testify on behalf of the applicant at the review.

(4) After the review, if the department of labor and industry determines that the applicant is entitled to the license, the department shall issue the license. If the department affirms the decision to not issue the license, the applicant is required to reapply to take the license examination, as provided in 50-74-309 through ~~and~~ 50-74-311, and may not take the examination within 45 days of the final decision to not issue the license.”

Section 27. Section 50-76-104, MCA, is amended to read:

“50-76-104. Application, examination, and fee for license. (1) Application for licenses must be made to the department and submitted with the appropriate fee that is set commensurate with the cost of administering this program, to be deposited in the state special revenue fund for use by the department.

(2) *The department shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.*

(3) *The department may use a third party to perform examination and grading services.”*

Section 28. Repealer. Sections 37-54-304 and 50-74-310, MCA, are repealed.

Section 29. Codification instruction. [Section 25] is intended to be codified as an integral part of Title 50, chapter 74, and the provisions of Title 50, chapter 74, apply to [section 25].

Approved April 1, 2003

CHAPTER NO. 197

[HB 312]

AN ACT EXCLUDING SERVICES PERFORMED BY AN INDIVIDUAL AS AN OFFICIAL AT ALL AMATEUR ATHLETIC EVENTS FROM THE DEFINITION OF "EMPLOYMENT" FOR PURPOSES OF THE STATE'S UNEMPLOYMENT COMPENSATION INSURANCE LAWS; AMENDING SECTION 39-51-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) (A) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles.

(B) The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act; ~~or~~

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873; or

(y) *service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event.*

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2003

CHAPTER NO. 198

[HB 416]

AN ACT EXTENDING THE PROTEST PERIOD FOR THE CREATION OR EXTENSION OF A RURAL IMPROVEMENT DISTRICT FROM 15 DAYS TO 30 DAYS; AND AMENDING SECTION 7-12-2109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2109, MCA, is amended to read:

"7-12-2109. Right to protest creation or extension of district. At any time within ~~15~~ 30 days after the date of the first publication of the notice of the

passage of the resolution of intention, any owner of property liable to be assessed for ~~said~~ work *proposed in the resolution* may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. ~~Such~~ The protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property. The protest must be delivered to the county clerk, who shall endorse ~~thereon~~ *on the protest* the date of its receipt by ~~him~~ *the clerk.*"

Approved April 1, 2003

CHAPTER NO. 199

[SB 103]

AN ACT PROVIDING FOR CONTINGENT FUND TRANSFERS FROM THE ORPHAN SHARE STATE SPECIAL REVENUE ACCOUNT TO THE HAZARDOUS WASTE/CERCLA ACCOUNT AND TO THE ENVIRONMENTAL QUALITY PROTECTION FUND ACCOUNT; PROVIDING FOR THE REPAYMENT OF CONTINGENT FUND TRANSFERS; AMENDING SECTIONS 75-10-621, 75-10-704, AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-621, MCA, is amended to read:

"75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

(c) revenue from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) funds are statutorily appropriated, as provided in 17-7-502(4), to the CERCLA match debt service account necessary to make principal, interest, and premium payments due on CERCLA bonds;

(b) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(c) to the extent funds are available after the appropriations in subsections (3)(a) and (3)(b), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(c), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. ~~Unused~~ Except as provided in subsection (6), unused balances remain in the account until appropriated by the legislature for the purposes specified in this section.

(6) (a) *If funds are transferred from the orphan share fund to the hazardous waste/CERCLA account pursuant to 75-10-743(10), the department shall, subject to the limitations in subsections (6)(b) and (6)(c) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the hazardous waste/CERCLA account to the orphan share fund the unencumbered amount remaining in the hazardous waste/CERCLA account at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the hazardous waste/CERCLA account.*

(b) *The total amount transferred pursuant to subsection (6)(a) may not exceed the total amount transferred to the hazardous waste/CERCLA account pursuant to 75-10-743(10).*

(c) *Subsection (6)(a) does not apply to the proceeds of bonds or notes sold pursuant to 75-10-623, to interest on the proceeds of those bonds or notes, or to appropriations of those proceeds or interest."*

Section 2. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is

authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) ~~The~~ *Except as provided in subsection (9), the fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.*

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature;

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(e) funds received from the interest income of the fund;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all

donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action.

(9) (a) *If funds are transferred from the orphan share fund to the environmental quality protection fund pursuant to 75-10-743(10), the department shall, subject to the limitation in subsection (9)(b) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the environmental quality protection fund.*

(b) *The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to the environmental quality protection fund pursuant to 75-10-743(10)."*

Section 3. Section 75-10-743, MCA, is amended to read:

“75-10-743. (Temporary) Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1)

There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-752 and, *except as provided in subsection (10)*, to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

- (a) all penalties assessed pursuant to 75-10-750(12);
- (b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;
- (c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;
- (d) unencumbered funds remaining in the abandoned mines state special revenue account;
- (e) interest income on the account;
- (f) funds received from settlements pursuant to 75-10-719(7); and
- (g) funds received from reimbursement of the department’s orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department’s costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-752 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department’s costs incurred in defending the orphan share in proportion to the orphan share’s allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, ~~the orphan share fund must pay~~ the department’s costs incurred in defending the orphan share *must be paid from the orphan share fund* in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-752 shall pay all the orphan share’s allocated share of the department’s costs incurred in

defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) ~~(a) On August 21, 2002, \$1,000 is transferred from the orphan share fund to the general fund.~~ If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be transferred to the general fund.

(b) If any money remains in the orphan share fund after June 30, 2005, *after the transfer of any funds is made pursuant to subsection (10)* and after outstanding claims are paid, the money must be deposited in the general fund.

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

(10) *For the biennium beginning July 1, 2003, and subject to the provisions of [section 4], the department may transfer funds from the orphan share fund to the environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed \$600,000. (Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)*"

Section 4. Contingent appropriation of orphan share funds. (1) Subject to the limitation in subsection (3), there is transferred from the orphan share account established in 75-10-743 to the environmental quality protection fund established in 75-10-704 an amount not to exceed \$600,000 during the biennium beginning July 1, 2003, if the expenditures from the environmental quality fund exceed revenue available to the fund. The money transferred pursuant to this subsection may be appropriated to the department of environmental quality subject to the appropriation from the environmental quality protection fund in [House Bill No. 2]. The total expenditures in each fiscal year of the biennium may not exceed the appropriation made in [House Bill No. 2].

(2) Subject to the limitation in subsection (3), there is transferred from the orphan share account established in 75-10-743 to the hazardous waste/CERCLA special revenue account established in 75-10-621 an amount not to exceed \$600,000 during the biennium beginning July 1, 2003, if the expenditures from the hazardous waste/CERCLA account exceed revenue available to the account. The money transferred pursuant to this subsection may be appropriated to the department of environmental quality subject to the appropriation from the hazardous waste/CERCLA account in [House Bill No. 2]. The total expenditures in each fiscal year of the biennium may not exceed the appropriation made in [House Bill No. 2].

(3) The total of the amounts transferred and appropriated pursuant to subsections (1) and (2) may not exceed \$600,000.

Section 5. Effective date. [This act] is effective July 1, 2003.

Section 6. Contingent termination. If 75-10-743 terminates June 30, 2005, then [sections 1 and 2] terminate June 30, 2005.

Approved April 1, 2003

CHAPTER NO. 200

[SB 107]

AN ACT INCREASING THE YEARLY PAYMENT TO A COUNTY FOR ITS JUNK VEHICLE COLLECTION AND GRAVEYARD BUDGET FROM \$1 TO \$1.25 FOR EACH MOTOR VEHICLE UNDER 8,001 POUNDS GROSS VEHICLE WEIGHT; INCREASING THE TOTAL PAYMENT TO COUNTIES WITH FEWER THAN 5,000 MOTOR VEHICLES UNDER 8,001 POUNDS GROSS VEHICLE WEIGHT FROM \$5,000 TO \$6,250; AMENDING SECTION 75-10-534, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-534, MCA, is amended to read:

“75-10-534. Department to pay approved county budget. The department shall pay to a county the amount of the approved junk vehicle collection and graveyard budget of the county. The yearly payment may not exceed ~~\$1~~ \$1.25 for each motor vehicle under 8,001 pounds gross vehicle weight that is licensed in that county. However, for those counties that have fewer than 5,000 ~~such~~ motor vehicles *under 8,001 pounds gross vehicle weight*, the department may pay up to ~~\$5,000~~ \$6,250, ~~providing if~~ the county can justify this payment. Counties realizing revenue from the sale of junk vehicles shall return to the state junk vehicle program revenue account money equal to the salvage value of each vehicle sold. The salvage value of a vehicle must be the average contract value of a crushed ton of junk vehicles as determined by the statewide salvage bids received by the department during the current fiscal year. Any additional revenue realized from the sale of junk vehicles may be retained by the county for use in the county’s junk vehicle program in addition to the approved junk vehicle collection and graveyard budget of the county.”

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved April 1, 2003

CHAPTER NO. 201

[SB 122]

AN ACT AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO AUTHORIZE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE LICENSES ENTITLING THE HOLDER OF A CLASS A-5, CLASS A-7, OR CLASS B-10 LICENSE TO TAKE A SECOND ELK, WHICH MUST BE ANTLERLESS; ESTABLISHING A FEE AND ELIGIBILITY REQUIREMENTS FOR A CLASS A-9 RESIDENT ANTLERLESS ELK B TAG AND A CLASS B-12 NONRESIDENT

ANTLERLESS ELK B TAG; AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ESTABLISH A WAITING PERIOD FOR ELIGIBILITY FOR CERTAIN ANTLERED BULL ELK PERMITS; AMENDING SECTIONS 87-2-104, 87-2-501, 87-2-505, 87-2-702, AND 87-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-104, MCA, is amended to read:

“87-2-104. Number of licenses allowed — fees. (1) It is unlawful for any person to apply for, purchase, or possess more than one license of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 licenses or to licenses issued under subsection (3) for game management purposes. However, when more than one license is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses than are authorized.

(2) The department may prescribe rules and regulations for the issuance or sale of a replacement license in the event the original license is lost, stolen, or destroyed upon payment of a fee not to exceed \$5.

(3) When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, Class B-7, Class B-8, or special antelope license to an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.

(4) *When authorized by the commission for game management purposes, the department may issue Class A-9, resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take an antlerless elk. An applicant must have a Class A-5 or Class A-7 license to be eligible for a Class A-9 license. An applicant must have a Class B-10 license to be eligible for a Class B-12 license. The commission shall determine the hunting districts or portions of hunting districts for which Class A-9 and Class B-12 licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.*

~~(4)~~(5) The fee for any resident or nonresident license of any class issued under subsection (3) must be set annually by the department and may not exceed the regular fee provided by law for that class or species.”

Section 2. Section 87-2-501, MCA, is amended to read:

“87-2-501. Class A-3, A-4, A-5, A-6, A-7, A-9—resident deer, elk, and bear licenses — special Class A-7 resident and nonresident license requirements and preference — fees. (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of the proper fee or fees, is entitled to purchase one each of the following licenses at the prescribed cost that will entitle a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

- (a) Class A-3, deer A tag, \$13;
- (b) Class A-4, deer B tag, \$8;
- (c) Class A-5, elk tag, \$16;

- (d) Class A-6, black bear tag, \$15;
- (e) Class A-7, antlerless elk tag, \$16-;
- (f) *Class A-9, resident antlerless elk B tag, \$16.*

(2) (a) The holder of a Class A-7 antlerless elk license who is 12 years of age or older is entitled to hunt antlerless elk in areas designated by the commission and at the times and upon the terms set forth by the commission.

(b) A person may not take more than ~~one~~ two elk during any license year, *only one of which may be antlered.* ~~and a~~ A person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) A nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section must be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) Fifteen percent of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 3. Section 87-2-505, MCA, is amended to read:

"87-2-505. (Temporary) Class B-10—nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of \$625 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d) or upon payment of the fee established as provided in 87-1-268 if the license is one of the licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 11,500 unreserved Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission.

(3) *A holder of a Class B-10 nonresident big game combination license may apply for a Class B-12 nonresident antlerless elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is \$270. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions specified by the*

commission. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999; sec. 9, Ch. 216, L. 2001.)

87-2-505. (Effective March 1, 2006) Class B-10—nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of \$550 and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of \$25 to participate in a preference system for deer and elk permits established by the commission.

(3) *A holder of a Class B-10 nonresident big game combination license may apply for a Class B-12 nonresident antlerless elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is \$270. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions determined by the commission.*

Section 4. Section 87-2-702, MCA, is amended to read:

“87-2-702. Restrictions on special licenses. (1) A person who has killed or taken any game animal, except a deer, *an elk*, or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) ~~After March 27, 1987, a~~ A person may lawfully take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) A person who receives a moose, mountain goat, or limited mountain sheep license, with the exception of an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection ~~(a)~~ (4)(a), “limited mountain sheep license” means a license that is valid for an area in which the number of licenses issued is restricted.

(b) A person who takes a mountain sheep using an unlimited mountain sheep license, with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection ~~(b)~~ (4)(b), “unlimited mountain sheep license” means a license that is valid for an area in which the number of licenses issued is not restricted.”

Section 5. Section 87-2-704, MCA, is amended to read:

“87-2-704. Regulation of special elk permits. (1) The department may:

(a) provide for the refund of resident elk tag license fees to persons applying for special elk permits in hunting districts where there is no general elk hunting and set time limits and describe area restrictions; and

(b) designate special elk permit areas where priority will be given to applicants who have not held special elk permits for a period of years to be determined by the department.

(2) The department shall provide that a person who is issued a special elk permit to hunt antlerless elk during the regular hunting season is:

(a) limited to the hunting and taking of only an antlerless elk in the hunting district or portion of a hunting district where the permit is valid; and

(b) entitled to the general elk hunting privileges for a holder of a Class A-5 license in all other hunting districts.

(3) *The commission may establish a waiting period during which a person who has received a special elk permit that is valid for an antlered bull may not receive another special elk permit that is valid for an antlered bull. The commission may specify which special elk permits are subject to the waiting period, by hunting district or portion of a hunting district.*

~~(3)(4) The fee for a special elk permit is \$2 beginning March 1, 1992, and \$3 beginning March 1, 1994.~~

~~(4)(5) The department may adopt rules necessary to implement this section."~~

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2003

CHAPTER NO. 202

[SB 125]

AN ACT REVISING SECURITIES LAWS FOR THE PURPOSE OF PROMOTING CAPITAL FORMATION BY CREATING AN ADDITIONAL EXEMPT TRANSACTION FOR MONTANA-BASED BUSINESSES; AND AMENDING SECTION 30-10-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions — rulemaking. Except as expressly provided in this section, 30-10-201 through 30-10-207 and 30-10-211 do not apply to the following transactions:

(1) a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to the securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has *not* been a ~~no~~ default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors have been in existence for less than 3 years and there has *not* been a ~~no~~ default in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15 days of the receipt of a written request, the matter will be set for hearing. If a hearing is not requested and is not ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may not operate retroactively. A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

(3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or between underwriters;

(5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of official duties;

(6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity;

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer. However, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) ~~any~~ a transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

(c) a transaction pursuant to an offer made in this state by an offeror that is used in conjunction with the exemption found in subsection (8)(a) and the offeror has applied to the commissioner to use the exemption found in subsection (8)(b) in conjunction with or in addition to the exemption in subsection (8)(a), which the commissioner may allow if:

(i) the offeror has its corporate headquarters or principal place of business in this state;

(ii) the seller reasonably believes that all the buyers are purchasing for investment;

(iii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iv) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in addition to the offers made pursuant to subsection (8)(a) and pays a filing fee that must accompany the application for approval. The commissioner may deny the application.

~~(d)~~ For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in this state, whether or not the offeror or any of the offerees are then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) an offer or sale of a preorganization certificate or subscription if:

(a) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective subscriber;

(b) the number of subscribers does not exceed 25; and

(c) a payment is not made by a subscriber;

(10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) a commission or other remuneration (other than a standby commission) is not paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or the notice specifying the terms of the offer;

(11) an offer, but not a sale, of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if a stop, refusal, denial, suspension, or revocation order is not in effect and a public proceeding or examination looking toward an order is not pending under either law;

(12) an offer, but not a sale, of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner does not disallow the offer in writing within 10 days of the filing;

(13) the issuance of a security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by security holders for the distribution other than the surrender of a right to a cash dividend when the security holder can elect to take a dividend in cash or in securities;

(14) a transaction incident to a right of conversion, a statutory or judicially approved reclassification, or a recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) a transaction in compliance with rules that the commissioner may adopt to serve the purposes of 30-10-102. The commissioner may require that 30-10-201 through 30-10-207 and 30-10-211 apply to any transactional exemptions adopted by rule.

(16) a transaction in the securities of a certified Montana capital company or a certified Montana small business investment capital company, as defined in 90-8-104, if the company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.

(17) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(18) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(19) a transaction that:

(a) involves the purchase of one or more precious metals;

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by the payment is delivered into the possession of a depository, other than the seller, that:

(i) (A) is a financial institution, meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state;

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection (19)(b), to be physically located within Montana at all times after the 7-day delivery period provided in subsection (19)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period;

(20) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity;

(21) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code; or

(22) (a) an offer or sale of securities by a cooperative association organized under the provisions of Title 35, chapter 15 or 17, or under the laws of another state that are substantially the same as the provisions of Title 35, chapter 15 or 17, if the offer and sale are only to members of the cooperative association or the purchase of the securities is necessary or incidental to establishing membership in the cooperative association;

(b) a cooperative organized under the laws of another state may not take advantage of the exemption created by this subsection (22) unless, not less than 10 days before the issuance or delivery of the securities, the cooperative has furnished the commissioner with a general written description of the transaction and any other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15 or 17, for the purposes of this subsection (22)."

Approved April 1, 2003

CHAPTER NO. 203

[SB 229]

AN ACT PROVIDING THAT, WITH RESPECT TO CERTAIN TYPES OF SURETY BONDS REQUIRED TO BE FURNISHED ON VARIOUS PUBLIC CONTRACTS, THE STATE OR OTHER GOVERNMENTAL AGENCIES MAY NOT REQUIRE THAT THE BONDS BE FURNISHED BY A PARTICULAR SURETY COMPANY OR BY A PARTICULAR INSURANCE PRODUCER FOR

A SURETY COMPANY; AND AMENDING SECTIONS 18-1-203, 18-2-201, 18-2-302, AND 18-4-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-1-203, MCA, is amended to read:

“18-1-203. Form of security. (1) (a) In all cases under 18-1-202(1), the bidder, offeror, or tenderer shall accompany any bid with either:

~~(a)~~(i) lawful money of the United States;

~~(b)~~(ii) a cashier’s check, certified check, bank money order, or bank draft, in any case drawn and issued by a federally chartered or state-chartered bank insured by the federal deposit insurance corporation; or

~~(c)~~(iii) a bid bond, guaranty bond, or surety bond executed by a surety corporation authorized to do business in the state of Montana. If a financial guaranty bond or surety bond is provided to secure the purchase of indebtedness, the long-term indebtedness of the company executing the financial guaranty bond or surety bond must carry an investment grade rating of one or more nationally recognized independent rating agencies.

(b) *The public authority soliciting or advertising for bids may not require that a bid bond, guaranty bond, or surety bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a surety company.*

(2) The money or, in lieu of money, the bank instruments or bid bonds, financial guaranty bonds, or surety bonds must be payable directly to the public authority soliciting or advertising for bids.”

Section 2. Section 18-2-201, MCA, is amended to read:

“18-2-201. Security requirements. (1) (a) Except as otherwise provided in 85-1-219 and subsections (3) through (5) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or public body contracts with a person or corporation to do work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the *person or corporation, person, or persons* with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a ~~licensed~~ surety company, *licensed in this state*, as surety, conditioned that the *person or corporation, person, or persons* shall:

~~(a)~~(i) faithfully perform all of the provisions of the contract;

~~(b)~~(ii) pay all laborers, mechanics, subcontractors, and material suppliers; and

~~(c)~~(iii) pay all persons who supply the *person, corporation, person or persons*, or subcontractors with provisions, provender, material, or supplies for performing the work.

(b) *The state or other governmental entity listed in subsection (1)(a) may not require that any bond required by subsection (1)(a) be furnished by a particular surety company or by a particular insurance producer for a surety company.*

(2) ~~Notwithstanding the provisions of subsection (1), the~~ *The state or other governmental entity listed in subsection (1)(a) may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee*

the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

- (a) lawful money of the United States; or
- (b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft, drawn or issued by:
 - (i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or
 - (ii) a credit union insured by the national credit union share insurance fund.
- (3) ~~Notwithstanding the provisions of subsection (1), any~~ Anyboard, council, commission, trustee, or body acting for any county, municipality, or ~~any~~ public body other than the state may, *subject to the provisions of subsection (1)(b)*, in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental ~~body~~ *entity*.
- (4) Except as provided in subsection (5), the state or other governmental entity may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$50,000.
- (5) A school district may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$7,500."

Section 3. Section 18-2-302, MCA, is amended to read:

"18-2-302. Bid security — waiver — authority to submit. (1) (a) Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid. The security may consist of cash, a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market certificate, or a bank draft. The security must be:

- ~~(a)~~(i) drawn and issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation;
 - ~~(b)~~(ii) drawn and issued by a credit union insured by the national credit union share insurance fund; or
 - ~~(c)~~(iii) a bid bond or bonds executed by a surety company authorized to do business in the state of Montana.
- (b) *The state or other governmental entity may not require that a bid bond or bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a surety company.*

(2) The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than \$25,000.

(3) The bid security must be signed by an individual authorized to submit the security by the corporation or other business entity on whose behalf the security is submitted. If the request for bid or other specifications provided by the state or other governmental entity specify the form or content of the bid security, the security submitted must comply with the requirements of that specification."

Section 4. Section 18-4-312, MCA, is amended to read:

“18-4-312. Bid and contract performance security. (1) For state contracts for the procurement of services or of supplies, the department may in its discretion require:

(a) bid security;

(b) contract performance security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, mechanics, and subcontractors; or

(c) both bid and contract performance security.

(2) (a) If security is required under subsection (1), the following types of security may be required to be deposited with the state:

~~(a)~~(i) a sufficient bond with a licensed surety company as surety;

~~(b)~~(ii) an irrevocable letter of credit not to exceed \$100,000 in accordance with the provisions of Title 30, chapter 5, part 1;

~~(c)~~(iii) money of the United States;

~~(d)~~(iv) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.

(b) *The department may not require that a bond required pursuant to subsection (2)(a)(i) be furnished by a particular surety company or by a particular insurance producer for a surety company.*

(3) The amount and type of the security must be determined by the department to be sufficient to cover the risk involved to the state. The security must be payable to the state of Montana. Contract performance security must remain in effect for the entire contract period. In determining the amount and type of contract performance security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. In determining the need for and amount of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror fails to enter into a formal contract. The considerations must include but are not limited to the type of supply or service being procured, the dollar amount of the proposed contract, and delivery time requirements. The department may adopt rules to assist it in making these determinations and in protecting the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be included in the invitations for bids or requests for proposals.

(4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract or provide contract performance security, as required by the invitation for bid or request for proposal, after notification of award, the department may, in its discretion, require the bidder to forfeit the bid security to the state and become immediately liable on the bid security, but not in excess of the sum stated in the security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the bid bond or other security may not exceed the amount specified in the invitation for bid or request for proposal.

(5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors whose bids or proposals are not accepted.

(6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not apply to procurements under this chapter.”

Approved April 1, 2003

CHAPTER NO. 204

[HB 373]

AN ACT REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION LAWS; CLARIFYING THE POLICY AND FINDINGS; CLARIFYING CERTAIN DEFINITIONS AND DEFINING CERTAIN TERMS; REDUCING THE TIME REQUIRED FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO APPROVE OR DISAPPROVE MINOR REVISIONS; MODIFYING PERMIT APPLICATION REQUIREMENTS; CLARIFYING HYDROLOGIC BALANCE RECLAMATION REQUIREMENTS; MODIFYING AREA MINING REQUIREMENTS; MODIFYING THE REQUIREMENTS FOR PLANTING VEGETATION FOLLOWING GRADING OF A DISTURBED AREA; PROVIDING STANDARDS FOR SUCCESSFUL REVEGETATION; CLARIFYING THAT VEGETATION THAT IS PLACED OR SEEDED BECOMES THE PROPERTY OF THE LANDOWNER AFTER THE BOND IS RELEASED; ALLOWING REVISION OF PERMIT AND RECLAMATION PLAN APPLICATIONS IN ORDER TO INCORPORATE THE PROVISIONS OF THIS ACT; AMENDING SECTIONS 82-4-202, 82-4-203, 82-4-221, 82-4-222, 82-4-231, 82-4-232, 82-4-233, 82-4-234, 82-4-235, AND 82-4-236, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-202, MCA, is amended to read:

“82-4-202. Policy — findings. (1) It is the declared policy of this state and its people to:

- (a) maintain and improve the state’s clean and healthful environment for present and future generations;
- (b) protect its environmental life-support system from degradation;
- (c) prevent unreasonable degradation of its natural resources;
- (d) restore, enhance, and preserve its scenic, historic, archaeologic, scientific, cultural, and recreational sites;
- (e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;
- (f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards ~~(, especially as to reclamation of disturbed lands)~~, in order to achieve ~~the aforementioned~~ those objectives; and
- (g) provide for the orderly development of coal resources through strip or underground mining to ~~assure~~ ensure the wise use of these resources and prevent the failure to conserve coal.

(2) The legislature ~~hereby~~ finds and declares that:

(a) in order to achieve the ~~aforementioned~~ policy objectives *enumerated in subsection (1)*, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and ~~assure~~ *ensure* a long-range dependable tax base, it is reasonably necessary to require, ~~after March 16, 1973,~~ that all strip-mining and underground-mining operations be limited to those for which 5-year permits are granted, that ~~no~~ a permit *may not* be issued until the operator presents a comprehensive plan for reclamation and restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, that certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances, all as more particularly appears in the remaining provisions of this part, and that the department be given authority to administer and enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended;

(b) this part ~~be deemed to be~~ *is* an exercise of the authority granted in the Montana constitution, ~~as adopted June 6, 1972,~~ and, in particular, a response to the mandate expressed in Article IX ~~thereof of the constitution and also be deemed to be~~ *that this part is also* an exercise of the general police power to provide for the health and welfare of the people;

(c) *coal mining alters the character of soils and overburden materials and that duplication of premining topography, soils, and vegetation composition is not practicable;*

(d) *the standard for successful reclamation of lands mined for coal is the reestablishment of sustainable land use comparable to premining conditions or to higher or better uses; and*

(e) *standards for successful reclamation must be well-defined, consistent, and attainable so that mine operators can reclaim lands disturbed by mining with confidence that the release of performance bonds can be achieved."*

Section 2. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

~~(2)~~(3) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(4) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area,

including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected as necessary to support postmining land uses within the area affected and the adjacent area; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.

~~(3)~~(5) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

~~(4)~~(6) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

~~(5)~~(7) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

~~(6)~~(8) "Board" means the board of environmental review provided for in 2-15-3502.

~~(7)~~(9) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

~~(8)~~(10) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

~~(9)~~(11) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

~~(10)~~(12) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrances are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(13) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

~~(11)~~(14) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

~~(12)~~(15) "Department" means the department of environmental quality provided for in 2-15-3501.

(16) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(17) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

~~(13)~~(18) "Failure to conserve coal" means the nonremoval or ~~nonutilization~~ nonuse of minable and marketable coal by an operation. However, the nonremoval or ~~nonutilization~~ nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

~~(14)~~(19) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(20) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(21) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(22) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

(23) *"Higher or better uses"* means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

(24) *"Hydrologic balance"* means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage as they relate to uses of land and water within the area affected by mining and the adjacent area.

~~(15)~~ (25) *"Imminent danger to the health and safety of the public"* means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(26) *"Industrial or commercial"* means land used for:

(a) *extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.*

(b) *retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.*

(27) *"Intermittent stream"* means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

(28) *"Land use"* means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

~~(16)~~ (29) *"Marketable coal"* means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(30) *"Material damage"* means, with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.

~~(17)~~ (31) *"Method of operation"* means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(18)~~ (32) "Minable coal" means that coal that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

~~(19)~~ (33) "Mineral" means coal and uranium.

~~(20)~~ (34) "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(21)~~ (35) "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

(c) operating a coal preparation plant; or

(d) uranium mining using in situ methods.

~~(22)~~ (36) "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

(37) "*Pastureland*" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(38) "*Perennial stream*" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

~~(23)~~ (39) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(24)~~ (40) "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

~~(25)~~ (41) "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(26)~~ (42) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work ~~to restore an area of land~~ *conducted on lands affected by strip mining or underground mining under a plan approved by the department under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.*

(43) "Recreation" means *land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less-intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.*

(44) "Reference area" means *a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.*

~~(27)~~ (45) "Remining" means *conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).*

(46) "Residential" means *land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.*

(47) "Restore" or "restoration" means *reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.*

~~(28)~~ (48) (a) "Strip mining" means *any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.*

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

~~(29)~~ (49) "Subsidence" means *a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.*

~~(30)~~ (50) "Surface owner" means:

(a) ~~a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land~~

~~(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income, if any, from farming or ranching operations; or a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or~~

who receives directly a significant portion of income from farming or ranching operations;

(c) the state of Montana when the state owns the surface; or

(d) the appropriate federal land management agency when the United States government owns the surface.

~~(31)~~(51) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(32)~~(52) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

~~(33)~~(53) "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

~~(34)~~(54) "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(55) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

~~(35)~~(56) "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 3. Section 82-4-221, MCA, is amended to read:

"82-4-221. Mining permit required. (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation. The designation must include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit must authorize the operator to engage in strip or underground mining upon the area of land described in the application and designated in the permit for a period of 5 years from the date of its issuance. The permit is renewable upon each 5-year anniversary after issuance upon application to the department at least 240 but not more than 300 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules adopted to implement this part, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. The renewal is further

subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden is on the opponents of renewal to demonstrate that the permit should not be renewed. A permit must terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at the time the construction of the synthetic or generating facility is initiated.

(2) As a condition to the issuance of each permit issued under this part, an authorized representative of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person must be allowed to accompany the inspector during the inspection.

(3) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the department. The department may not approve the application unless it finds that reclamation in accordance with this part would be accomplished. Application for minor revision must be approved or disapproved within a reasonable time, depending on the scope and complexity, but ~~in no case longer than 120 days~~ *within 60 days, which may be extended by an additional 30 days by mutual agreement of the department and the applicant.* Applications for major revisions are subject to all the permit application requirements and procedures."

Section 4. Section 82-4-222, MCA, is amended to read:

"82-4-222. Permit application. (1) An operator desiring a permit shall file an application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. The plan must reflect thorough advance investigation and study by the operator, include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of use, and ~~state~~ *provide*:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner, director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

(ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed explanation of the facts involved in each case must be attached.

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

(i) the names and addresses of any persons who are engaged in strip-mining or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings that the applicant or ~~his~~ *the applicant's* agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of the minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application must contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department requires across the surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit must be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections must also include all existing shafts, entries, and haulageways.

(l) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of ~~his~~ *the applicant's* application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected if a permit is granted;

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface water and ground

water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application. *The determination of probable hydrologic consequences must include findings on:*

- (i) whether adverse impacts may occur to the hydrologic balance;*
- (ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of ground water or surface water supplies;*
- (iii) whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other beneficial use; and*
- (iv) what impact the operation will have on:*
 - (A) sediment yields from the disturbed area;*
 - (B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;*
 - (C) flooding or streamflow alteration;*
 - (D) ground water and surface water availability; and*
 - (E) other characteristics required by the department that potentially affect beneficial uses of water in and adjacent to the permit area;*
- (n) a plan for monitoring ground water and surface water, based upon the determination of probable hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of parameters that relate to the availability and suitability of ground water and surface water for current and approved postmining land uses and the objectives for protection of the hydrologic balance.*
- (o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other methods approved by the department, showing the manner of spoil placement, showing removal of coal volume and overburden swell, and including:*
 - (i) locations and elevations of tie-in points with adjacent unmined drainageways;*
 - (ii) approximate locations of primary or highest order drainageways and associated drainage divides in the reclaimed topography; and*
 - (iii) projected elevations of primary drainageways and associated drainage divides and generalized slopes with the level of detail appropriate to project the approximate original contour;*
- (p) the condition of the land to be covered by the permit prior to any mining, including:*
 - (i) the land uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining;*

(ii) *the capability of the land prior to any mining to support a variety of uses, giving consideration to soil characteristics, topography, and vegetative cover; and*

(iii) *the productivity of the land prior to mining, including appropriate classification as prime farm land, as well as the average yield of food, fiber, forage, or wood products from land under high levels of management;*

~~(n)~~(q) a coal conservation plan; and

~~(o)~~(r) other or further information as the department may require.

(2) The application for a permit must be accompanied by two copies of all maps meeting the requirements of subsections (2)(a) through ~~(2)(n)~~ (2)(q). The maps must:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification must be signed and notarized. The department may reject a map as incomplete if its accuracy is not attested.

(n) contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic

consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state, certifying that the applicant has in force for the strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of ~~his~~ *the applicant's* application for public inspection with the clerk and recorder at the courthouse of the county in which the major portion of mining is proposed to occur."

Section 5. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section

and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the

application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days of the informal conference.

(f) Except as provided in 75-1-208(4)(b), the department shall prepare written findings granting or denying the permit or major revision application in whole or in part ~~no~~ not later than 45 days from the date the application is determined acceptable. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing must be held within 30 days of the request. For purposes of a hearing, the department may order site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify the

person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in ~~associated offsite~~ *adjacent* areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation *as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area* by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; ~~and~~

(vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and

~~(vii)~~ *(viii) any other actions that the department may prescribe to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas;*

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area.”

Section 6. Section 82-4-232, MCA, is amended to read:

“82-4-232. Area mining required — bond — alternative plan. (1) (a) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. ~~All highwalls must be reduced and the steepest slope of the reduced highwall may be no greater than 20 degrees from the horizontal. Highwall reduction must be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading must eliminate all highwalls and spoil peaks.~~ The area of land affected must be ~~restored~~ *backfilled and graded* to the approximate original contour of the land. *However:*

(i) *consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to enhance the postmining land use and develop a postmining landscape that will provide greater moisture retention, greater stability, and reduced soil losses from runoff and erosion;*

(ii) *postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;*

(iii) *permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by board rules; and*

(iv) *reclaimed topography must be suitable for the approved postmining land use.*

(b) *Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved.*

(c) *When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff. ~~Additional restoration work may be required by the department according to rules adopted by the board.~~*

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the board, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining operation. The notice is considered part of any bond release application and must contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the

results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) Upon receipt of the request and copies of the notification made under subsection (6)(a), the department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution. The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if ~~no~~ a public hearing is *not* held pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days after the hearing.

(c) The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion of the bond or deposit has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(c)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. ~~No~~ Any part of the bond or deposit may *not* be released under this subsection (6)(c)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(d) If the department disapproves the application for release of the bond or a portion of the bond, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the department, it shall notify the municipality in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operations has the right to file written objections to the proposed release from bond to the department within 30 days after the last publication of the notice provided for in subsection (6)(a). If written objections are filed and a hearing is requested, the department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the request for the hearing, hold a public hearing in the locality of the operation proposed for bond release. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for the hearing.

(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths; subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) *All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).*

~~(7)~~(8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it meets all of the following criteria:

- (i) *There is a reasonable likelihood for achievement of the alternate land use.*
- (ii) *The alternate land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.*
- (iii) *The alternate land use will not:*
 - (A) *be impractical or unreasonable;*
 - (B) *be inconsistent with applicable land use policies or plans;*
 - (C) *involve unreasonable delay in implementation; or*

~~(D) cause or contribute to violation of federal, state, or local law. alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans must be submitted to the department, and after consultation with the landowner, if the plans are approved by the department and complied with within the time limits determined by the department as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the department. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(l).~~

~~(8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be used and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation at a minimum to:~~

~~(a) restore the land affected to a condition capable of supporting the use that it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not determined to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and~~

~~(b) prevent soil erosion to the extent achieved prior to mining.~~

~~(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.~~

~~(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.~~

~~(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan."~~

Section 7. Section 82-4-233, MCA, is amended to read:

"82-4-233. Planting of vegetation following grading of disturbed area. (1) ~~Except as provided in subsection (4), after the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant the legumes, grasses, shrubs, and trees that are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:~~

~~(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;~~

~~(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and~~

~~(c) preventing soil erosion to the extent achieved prior to the operation. The operator shall establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and other constructed features approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:~~

~~(a) diverse, effective, and permanent;~~

~~(b) composed of species native to the area or of introduced species when desirable and necessary to achieve the postmining land use and when approved by the department;~~

~~(c) at least equal in extent of cover to the natural vegetation of the area; and~~

~~(d) capable of stabilizing the soil surface in order to control erosion to the extent appropriate for the approved postmining land use.~~

~~(2) The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover must be defined by rules of the board. The reestablished plant species must:~~

~~(a) be compatible with the approved postmining land use;~~

~~(b) have the same seasonal growth characteristics as the original vegetation;~~

~~(c) be capable of self-regeneration and plant succession;~~

~~(d) be compatible with the plant and animal species of the area; and~~

~~(e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species laws or regulations.~~

~~(3) Reestablished vegetation must be appropriate to the postmining land use so that when the postmining land use is:~~

~~(a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c) are not applicable;~~

~~(b) pastureland or grazing land, reestablished vegetation must have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable;~~

~~(c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve appropriate stocking rates.~~

~~(3)(4) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1).~~

~~(4)(5) For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department pursuant to subsection (2) and on which the reclaimed vegetation otherwise meets the requirements of subsection subsections (1) and (2) and applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation."~~

Section 8. Section 82-4-234, MCA, is amended to read:

“82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by ~~his~~ *the operator's* operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans ~~shall~~ *must* be kept current with the operation as defined by rules of the board, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current. ~~A permittee may not, without department approval, disturb any area that has been seeded pursuant to 82-4-233.”~~

Section 9. Section 82-4-235, MCA, is amended to read:

“82-4-235. Inspection of vegetation Determination of successful revegetation — final bond release. (1) *Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:*

(a) *for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;*

(b) *for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;*

(c) *for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;*

(d) *reestablished vegetation is diverse if multiple plant species meeting the requirements of 82-4-233(1)(b) are present. The department may approve a lesser diversity standard for postmining land uses other than grazing land.*

(e) *reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;*

(f) *reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and*

(g) *plant species comprising the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area, are introduced species that have become naturalized, or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.*

(2) ~~Inspection and evaluation for permanent diverse of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover~~

has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

~~(2)~~(3) (a) Notwithstanding the provision in subsection ~~(4)~~ (2), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of ~~82-4-232(8)~~ 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection ~~(2)(a)~~ (3)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection ~~(4)~~ (2)."

Section 10. Section 82-4-236, MCA, is amended to read:

"82-4-236. Vegetation as property of landowner. All legumes, grasses, shrubs, and trees vegetation which are that is planted or seeded on the area of land affected as required by this part or rules adopted under this part become becomes the property of the landowner after complete release of the bond, unless the operator and the landowner agree otherwise."

Section 11. Permit and reclamation plan application revisions. (1)

An applicant may revise an application for a permit, a permit amendment, or a permit revision that is pending on [the effective date of this act], in order to incorporate the provisions of this part.

(2) A permittee may apply to revise and the department may approve an application to incorporate the provisions of this part into a reclamation plan approved before [the effective date of this act]. The reclamation plan may be revised whether or not reclamation has been completed pursuant to the reclamation plan.

Section 12. Codification instruction. [Section 11] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 11].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 15. Contingent voidness. (1) If any provision of [this act] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then that portion of [this act] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred.

Section 16. Effective date. [This act] is effective January 1, 2004.

Approved April 2, 2003

CHAPTER NO. 205

[HB 616]

AN ACT REVISING THE TAX CHANGES TO CONTRIBUTIONS TO QUALIFIED ENDOWMENTS THAT WERE ENACTED DURING THE AUGUST 2002 SPECIAL SESSION; REPEALING THE INCREASES TO THE CREDITS AND DEDUCTIONS FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS FOR FISCAL YEAR 2004; AMENDING SECTION 11, CHAPTER 24, SPECIAL LAWS OF 2002; REPEALING SECTIONS 2, 4, 6, AND 8, CHAPTER 24, SPECIAL LAWS OF 2002; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11, Chapter 24, Special Laws of August 2002, is amended to read:

“Section 11. Termination. ~~(1)~~ [Sections 1, 3, 5, and 7] terminate June 30, 2003.

~~(2) [Sections 2, 4, 6, and 8] terminate April 30, 2004.”~~

Section 2. Repealer. Sections 2, 4, 6, and 8, Chapter 24, Special Laws of August 2002, are repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2003

CHAPTER NO. 206

[SB 100]

AN ACT ELIMINATING THE REQUIREMENT FOR A HEALTH CARE DATABASE; ELIMINATING THE DEFINITION OF THE TERMINATED “HEALTH CARE ADVISORY COUNCIL”; AMENDING SECTIONS 50-4-312, 50-4-504, AND 50-4-505, MCA; REPEALING SECTION 50-4-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-4-312, MCA, is amended to read:

“50-4-312. Consumer report cards. (1) The Montana health care advisory council shall appoint a task force of consumers, employers, health insurers, hospitals, health care providers, and legislators to design a consumer report card that will enhance consumer responsibility in the use of health care services.

(2) The Montana health care advisory council shall, by October 1, 1996, submit the task force’s proposal to the legislature containing the information needed to prepare the consumer report card. The information must include:

(a) uniform data, including charges, that will enable consumers to evaluate the cost of medical procedures;

(b) data about insurance plans, such as benefit and cost provisions; *and*

(c) additional information that may assist consumers in making informed choices about their medical care; ~~and~~

~~(d) any further applicable information generated as a result of efforts undertaken pursuant to 50-4-502.~~

(3) The Montana health care advisory council shall also develop standards for uniform data to be provided by health insurers, hospitals, and health care providers and shall take into account the feasibility and cost-effectiveness of the standards.

(4) To the extent possible, data collected for the consumer report card must be provided by data sources that currently exist.”

Section 2. Section 50-4-504, MCA, is amended to read:

“50-4-504. Definitions. As used in this part, the following definitions apply:

~~(1) “Database” means the health care database created pursuant to 50-4-502.~~

~~(2)~~(1) “Department” means the department of public health and human services provided for in Title 2, chapter 15, part 22.

~~(3)~~(2) “Health care” includes both physical health care and mental health care.

~~(4) “Health care advisory council” means the council provided for in 50-4-103, 50-4-104, 50-4-203 through 50-4-206, and 50-4-403.~~

~~(5)~~(3) “Health care facility” means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

~~(6)~~(4) “Health care provider” or “provider” means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

~~(7)~~(5) “Health insurer” means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.”

Section 3. Section 50-4-505, MCA, is amended to read:

“50-4-505. Uniform claim forms and procedures. The commissioner of insurance, ~~after consultation with the health care advisory council,~~ may adopt by rule uniform health insurance claim forms and uniform standards and procedures for the use of the forms and processing of claims, including the submission of claims by means of an electronic claims processing system.”

Section 4. Repealer. Section 50-4-502, MCA, is repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2003

CHAPTER NO. 207

[SB 104]

AN ACT CLARIFYING THE LAW GOVERNING PER DIEM CHARGES FOR STATE INSTITUTIONS; CHANGING THE TIME FOR THE ANNUAL REVIEW OF THE PER DIEM CHARGE FOR STATE INSTITUTIONS; AMENDING SECTIONS 53-1-401 AND 53-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-401, MCA, is amended to read:

“53-1-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “All-inclusive rate” means a fixed charge that is computed on a daily basis or on the basis of another time period for inpatients, that is computed on a per visit basis for outpatients, and that is applicable uniformly to each patient without regard to the extent of the services required by the patient and without regard to a distinction between physician services and hospital services.

(2) “Ancillary charge” means the expense of providing identifiable, direct, resident services, including but not limited to:

- (a) physicians’ services;
- (b) x-ray and laboratory services;
- (c) dental services;
- (d) speech-language pathology and audiology services;
- (e) occupational and physical therapy;
- (f) medical supplies;
- (g) prescribed drugs; and
- (h) specialized medical equipment.

(3) “Care” means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

(4) “Cost of care” means the applicable all-inclusive rate charges or per diem charges and ancillary charges for a resident’s care that are determined as provided in this part.

(5) “Department” means the department of public health and human services provided for in 2-15-2201.

(6) "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.

(7) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(8) "Gross daily budgeted cost" means the total cost of operating a facility as budgeted through the legislative appropriation process less the budgeted amount of federal grant revenue for the institution *for a fiscal year*.

(9) "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous period in excess of 120 days. The absence of a resident from the institution due to a temporary or trial visit may not be counted as interrupting the accrual of the 120 days required to attain the status of a long-term resident.

(10) "Per diem charge" means the gross daily budgeted cost of operating an institution or an individual unit of an institution ~~for the state fiscal year~~ (including but not limited to contracted medical services, depreciation, and associated department costs but excluding the cost of educational programs, ancillary charges, and costs not directly identified with patient care) divided by the full-time equivalent resident load for the previous state fiscal year.

(11) "Resident" means any person who is receiving care from or who is a resident of an institution listed in 53-1-402.

(12) (a) "Third party" means any third-party individual or entity that is or may be liable to pay all or part of the charges for a resident's cost of care, including but not limited to applicable medicare, medicaid, and personal insurance or other similar health care benefits.

(b) Third party does not include:

(i) a managed care organization administering a mental health managed care program under contract with the department; or

(ii) a financially responsible person."

Section 2. Section 53-1-404, MCA, is amended to read:

"53-1-404. Department to compute review and establish per diem charge. The per diem charge for the fiscal year must be ~~computed~~ *reviewed* on ~~July or before October 1~~ of each year by the department. If the *review indicates that the budgeted costs of an institution change have changed* substantially ~~within the fiscal year since the last review~~, the per diem charge ~~may~~ must be adjusted to compensate for those changes."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2003

CHAPTER NO. 208

[HB 467]

AN ACT PROVIDING THAT NECESSITY MUST BE SHOWN BEFORE CHANGES TO THE EXISTING WATER QUALITY OF CERTAIN WATERS CAN BE PROHIBITED; REQUIRING THE BOARD OF ENVIRONMENTAL

REVIEW TO MAKE A WRITTEN FINDING WHEN ACCEPTING A PETITION TO CLASSIFY WATERS AS OUTSTANDING RESOURCE WATERS; PROVIDING CRITERIA FOR THE BOARD OF ENVIRONMENTAL REVIEW'S WRITTEN FINDING; PROVIDING A HEARING PROCESS WHEN THE BOARD OF ENVIRONMENTAL REVIEW RECEIVES A PETITION FOR RULEMAKING TO CLASSIFY A WATER AS AN OUTSTANDING RESOURCE WATER; PROVIDING THAT THE COSTS OF THE ENVIRONMENTAL IMPACT STATEMENT MUST BE PAID BY THE PETITIONER; AMENDING SECTIONS 75-5-315 AND 75-5-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-315, MCA, is amended to read:

“75-5-315. Outstanding resource waters — statement of purpose. (1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should, *upon a showing of necessity*, prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of 75-5-316 and this section is to provide this protection, *when necessary*, and to provide guidance to the board in establishing rules to accomplish that level of protection.”

Section 2. Section 75-5-316, MCA, is amended to read:

“75-5-316. Outstanding resource water classification — rules — criteria — limitations — procedure — definition. (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the board for rulemaking to classify *state* waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and ~~finds~~ *makes a written finding containing the provisions enumerated in subsection (3)(d)* that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the *increased protection under the classification is necessary to protect the outstanding resource identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or more of the criteria provided in subsection (4) compromised as a result of pollution; and*

(iii) *classification as an outstanding resource water is necessary because of a finding that there is no other effective process available that will achieve the necessary protection.*

(d) *The written finding provided for in subsection (3)(c) must:*

(i) *identify the criteria provided in subsection (4) that the board believes serve as justification for the determination that the water is an outstanding resource;*

(ii) *specifically identify the criteria that are at risk and explain why those criteria are at risk; and*

(iii) *specifically explain why other available processes, including the requirements of 75-5-303, will not achieve the necessary protection.*

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) *Before accepting a petition, the board shall:*

(a) *publish a notice and brief description of the petition in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public. The cost of publication must be paid by the petitioner.*

(b) *provide for a 30-day written public comment period regarding whether the petition contains sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection (5)(c);*

(c) *hold a public hearing regarding the petition and its contents and allow further written and oral testimony at the hearing;*

(d) *issue a proposed decision, including:*

(i) *the written finding provided for in subsection (3)(c); and*

(ii) *the board's acceptance or rejection of the petition;*

(e) *provide for a 30-day public comment period regarding the board's proposed decision; and*

(f) issue a final decision on acceptance or rejection of the petition, which must include a response to comments that were received by the board, and make copies of this decision available to the public.

~~(5)(6)~~ (a) After acceptance of a petition, the board shall ~~require the preparation of~~ *direct the department to prepare* an environmental impact statement, as provided under Title 75, chapter 1, part 2, ~~and this section when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values.~~

(b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data and information, and completing the environmental impact statement.

(ii) Before the department may initiate work on the environmental impact statement, the petitioner shall pay the estimated cost of completing the environmental impact statement, as determined by the department.

(iii) Upon completion of the environmental impact statement, the petitioner shall pay the department any costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

(iv) The board may not grant or deny a petition until full payment for the environmental impact statement has been received by the department.

~~(6)(7)~~ The board shall consult with other relevant state agencies and county governments when reviewing outstanding resource water classification petitions.

~~(7)(8)~~ (a) ~~In accordance with 2-4-315, the~~ *After completion of an environmental impact statement and consultation with state agencies and local governments, the board may deny an accepted outstanding resource water classification petition if it finds that:*

(i) the requirements of subsection (3) (c) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(c) If the board grants the petition, the board shall initiate rulemaking to classify the waters as outstanding resource waters.

~~(8)(9)~~ A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

~~(9)(10)~~ The board may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters.

(11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association, or other private or public entity that petitions the board to adopt rules to classify waters as outstanding resource waters."

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to petitions for rulemaking to classify waters as outstanding resource waters that are filed after [the effective date of this act].

Approved April 3, 2003

CHAPTER NO. 209

[HB 306]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IX OF THE MONTANA CONSTITUTION RECOGNIZING AND PRESERVING THE HERITAGE OF MONTANA CITIZENS' OPPORTUNITY TO HARVEST WILD FISH AND WILD GAME ANIMALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article IX of The Constitution of the State of Montana is amended by adding a new section 6 that reads:

Section 6. Preservation of harvest heritage. The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create a right to trespass on private property or diminution of other private rights.

Section 2. Effective date. This amendment is effective upon approval by the electorate.

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2004 by printing on the ballot the full title of this act and the following:

- FOR recognizing and preserving the heritage of Montanans' opportunity to harvest wild fish and game.
- AGAINST recognizing and preserving the heritage of Montanans' opportunity to harvest wild fish and game.

CHAPTER NO. 210

[HB 122]

AN ACT REVISING THE VIDEO GAMBLING MACHINE LAWS TO TAKE INTO ACCOUNT CONNECTION OF MACHINES TO THE AUTOMATED ACCOUNTING AND REPORTING SYSTEM; PROVIDING FOR DEPARTMENT OF JUSTICE TRAINING OF TECHNICIANS WORKING ON

OR INSTALLING THE MACHINES; AMENDING SECTIONS 23-5-602, 23-5-610, 23-5-611, 23-5-621, AND 23-5-637, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-602, MCA, is amended to read:

"23-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

(2) "Available connection date" means the date on which the department begins to accept applications for connection of machines to the automated accounting and reporting system.

~~(2)~~(3) (a) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

~~(3)~~(4) (a) "Draw poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

~~(4)~~(5) "Gross income" means money put into a video gambling machine minus credits paid out in cash.

~~(5)~~(6) (a) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

~~(6)~~(7) "Licensed machine owner" means a licensed operator or route operator who owns a video gambling machine for which a permit has been issued by the department.

~~(7)~~(8) "Permitholder" means a licensed operator on whose premises is located one or more video gambling machines for which a permit has been issued by the department."

Section 2. Section 23-5-610, MCA, is amended to read:

“23-5-610. (Temporary) Video gambling machine gross income tax — credit — records — distribution — quarterly statement and payment.

(1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine ~~during the 12 month period ending December 31, 2004~~ *prior to the available connection date;*

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is \$250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.

(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video

gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

(6) Except as provided in subsection (7), the department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection (5) to the general fund.

(7) Receipts from the taxes collected under this section are pledged and dedicated to guarantee repayment of loans participated in under 23-5-638 in an amount sufficient to meet the prepayment obligation for the fiscal year during which the loans are made. The amount of taxes pledged by this subsection is the dollar amount of loan participation under 23-5-638 and must be allocated to a separate account in the short-term investment pool. The board of investments is not entitled to use the proceeds from taxes collected under this section to repay a loan made under 23-5-638 unless the board certifies that all other commercially available means of collection on the loan have been exhausted. (Terminates December 31, 2005—sec. 10, Ch. 424, L. 1999.)

23-5-610. (Effective January 1, 2006) Video gambling machine gross income tax — credit — records — distribution — quarterly statement and payment.

(1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine ~~during the 12 month period ending December 31, 2001~~ prior to the available connection date;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is \$250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.

(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the

department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

(6) The department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection (5) to the general fund."

Section 3. Section 23-5-611, MCA, is amended to read:

"23-5-611. Machine permit qualifications — limitations. (1) (a) A person who has been granted an operator's license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises as provided in 23-5-119 may be granted a permit for the placement of video gambling machines on the person's premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under 23-5-177, a permit for the same number of video keno, ~~or~~ bingo, or combination poker-keno-bingo gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the placement of bingo and keno machines on the person's premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination."

Section 4. Section 23-5-621, MCA, is amended to read:

"23-5-621. Rules. (1) The department shall adopt rules that:

(a) implement 23-5-637;

(b) describe the video gambling machines authorized by this part and state the specifications for video gambling machines authorized by this part;

(c) allow video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities;

(d) allow each video gambling machine ~~connected~~ *approved for connection* to the department's automated accounting and reporting system to offer any combination of approved poker, keno, and bingo games within the same video gambling machine cabinet *if*:

(i) after October 1, 2002, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system or has entered into an agreement with the department for connection of the machine to the system; or

(ii) after October 1, 2003, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system or has entered into an agreement with the department for connection of the machine to the system, but the system is unavailable for connection;

(e) allow, on an individual license basis, licensed machine owners and operators of machines connected to the department's automated accounting and reporting system to:

(i) electronically acquire and use for an individual licensed premises the information and data collected by the department for business management, accounting, and payroll purposes; however, the rules must specify that the data made available as a result of the department's automated accounting and reporting system may not be used by licensees for player tracking purposes; and

(ii) acquire and use, at the expense of a licensee, a department-approved site controller;

(f) provide that, for video gambling machines connected to the department's automated accounting and reporting system, machine paper audit and accounting rolls need not be retained for more than 4 consecutive quarters; and

(g) minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines that are connected to the department's automated accounting and reporting system.

(2) The department's rules for an automated accounting and reporting system must, at a minimum:

(a) provide for confidentiality of information received through the automated accounting and reporting system within the limits prescribed by 23-5-115(6) and 23-5-116;

(b) prescribe specifications for maintaining the security and integrity of the automated accounting and reporting system;

(c) limit and prescribe the circumstances for electronic issuance of video gambling machine permits and electronic transfer of funds for payment of taxes, fees, or penalties to the department based on the requirement that electronic permitting and transfer of funds may be done only when the department has a request in writing from the owner of the electronic funds transfer account; ~~and~~

(d) limit and prescribe the circumstances under which machines may be disabled for malfunctions or violations detected by use of the automated accounting and reporting system or for other violations of this chapter. Under no

circumstances may machines connected to the automated system be disabled for violations except upon clear and convincing evidence supporting a determination made after notice and an opportunity for hearing and with the right of judicial review under the Montana Administrative Procedure Act.

(e) *provide for training by the department of technicians who install, maintain, and repair video gambling machines and components connected to the automated accounting and reporting system and for a department list of technicians who have completed department training.*"

Section 5. Section 23-5-637, MCA, is amended to read:

"23-5-637. Automated accounting and reporting system. (1) For the purposes of performing its duties under this chapter, minimizing regulatory costs, simplifying the reporting of video gambling machine revenue data, preserving the integrity of video gambling machines within its jurisdiction, lessening administrative and recordkeeping burdens for licensed machine owners and licensed operators and the department, and enhancing the management tools available to the industry and the state, the department may operate and maintain, subject to the restrictions contained in subsections (3) and (4), an automated accounting and reporting system for video gambling machines.

(2) Except as provided in subsection (4), connection of video gambling machines to the department's automated accounting and reporting system is voluntary for licensed machine owners and licensed operators who hold a valid current license ~~on December 31, 2000~~ *prior to the available connection date.*

(3) (a) The department shall issue a request for proposals for the automated accounting and reporting system ~~on or before September 1, 1999~~. The department may not sign a final contract for the purpose of acquiring an automated system unless it has obtained written confirmation from licensed machine owners who volunteer to participate in the automated system and whose commitment to participate covers 70% of the total number of video gambling machines that are capable of being connected to the automated system.

(b) The 70% calculation must be based on video gambling machines that had permits on July 15, ~~1999~~, *prior to the contract date* and on an analysis by the department of the feasibility of upgrading specific video gambling machine models based on the age of the video gambling machines, technologies employed, numbers of video gambling machines in a model series, and existence or nonexistence of a licensed manufacturer to support upgraded conversions.

(c) A request for proposals for the system must require that the proposal:

(i) provide that communication protocols between connected video gambling machines and the central system and between connected video gambling machines and on-premises site controllers do not favor any one central system vendor or component manufacturer; and

(ii) provide for computer backup and contingency planning to ensure that there will be no video gambling machine operation interruptions because of central system failures.

(4) ~~After December 31, 2000~~ *the available connection date:*

(a) a permit may not be issued for a video gambling machine manufactured after ~~December 31, 2000~~, *the available connection date* that is not manufactured

in a manner specifically designed to allow the video gambling machine to be connected to the department's automated accounting and reporting system;

(b) if a permitholder voluntarily connects one or more video gambling machines at a premises to the department's automated accounting and reporting system, all connected video gambling machines on the premises, including video gambling machines replacing connected video gambling machines, must remain connected to the automated system as long as video gambling machines are operated on the premises; and

(c) if there is a change in the majority ownership interests of a licensed gambling business, all video gambling machines located on the premises must be connected to the department's automated accounting and reporting system within 5 years after the date on which the majority ownership change is approved by the department, unless there are five or fewer video gambling machines on the premises and:

(i) they are owned by the licensed operator; or

(ii) the premises are located in a city, town, or county with a population of 3,000 or less, according to the last official decennial census."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2003

CHAPTER NO. 211

[HB 165]

AN ACT AUTHORIZING THE STATE LOTTERY COMMISSION TO ENTER INTO AGREEMENTS WITH OTHER COUNTRIES TO OFFER LOTTERY GAMES AND TO ENTER INTO AGREEMENTS WITH AN ASSOCIATION FOR THE PURPOSE OF PARTICIPATING IN MULTISTATE LOTTERY GAMES OR GAMES OFFERED IN OTHER STATES AND OTHER COUNTRIES; AMENDING SECTION 23-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-7-202, MCA, is amended to read:

"23-7-202. Powers and duties of commission. The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) determine policies for the operation of the state lottery, supervise the director and the staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(3) maximize the net revenue paid to the state under 23-7-402 and ensure that all policies and rules adopted further revenue maximization;

(4) subject to 23-7-402(1), determine the percentage of the money paid for tickets or chances to be paid out as prizes;

(5) determine the price of each ticket or chance and the number and size of prizes;

- (6) provide for the conduct of drawings of winners of lottery games;
- (7) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;
- (8) study and may enter into agreements with:
 - (a) other lottery states *and countries* to offer lottery games; *or*
 - (b) *an association for the purpose of participating in multistate lottery games or games offered in other states and other countries;*
- (9) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to this part, and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and
- (10) adopt rules relating to lottery staff sales incentives or bonuses and sales agents' commissions and any other rules necessary to carry out this part."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2003

CHAPTER NO. 212

[HB 262]

AN ACT CLARIFYING THE POLICY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND PROVIDING LEGISLATIVE INTENT WITH REGARD TO THE MANAGEMENT OF LARGE PREDATORS; ESTABLISHING THAT LARGE PREDATORS MUST BE MANAGED PRIMARILY TO PRESERVE HUNTABLE SPECIES OF LARGE GAME AND TO PROTECT LIVESTOCK, PETS, AND PEOPLE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Policy for management of large predators — legislative intent. (1) In managing large predators, the primary goals of the department must be to:

- (a) preserve citizens' opportunities to hunt large game species;
 - (b) protect humans, livestock, and pets; and
 - (c) preserve and enhance the safety of the public during outdoor recreational and livelihood activities.
- (2) As used in this section:
- (a) "large game species" means deer, elk, mountain sheep, moose, antelope, and mountain goats; and
 - (b) "large predators" means bears, mountain lions, and wolves.

(3) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2003

CHAPTER NO. 213

[HB 284]

AN ACT PROVIDING THAT A PEACE OFFICER DOES NOT NEED PROBABLE CAUSE TO BELIEVE THAT A PERSON WAS DRIVING UNDER THE INFLUENCE IN ORDER TO REQUEST A TEST OF A PERSON'S BLOOD OR BREATH FOR THE PURPOSE OF DETERMINING ANY MEASURED AMOUNT OR DETECTED PRESENCE OF ALCOHOL OR DRUGS IN THE PERSON'S BODY WHEN THE PERSON HAS BEEN INVOLVED IN A MOTOR VEHICLE ACCIDENT OR COLLISION RESULTING IN SERIOUS BODILY INJURY OR DEATH; AND AMENDING SECTION 61-8-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, ~~bodily injury, or death~~; or

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension or revocation and the right to a hearing provided in 61-8-403.

(6) The following suspension and revocation periods are applicable upon refusal to submit to one or more tests:

(a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part."

Approved April 3, 2003

CHAPTER NO. 214

[HB 333]

AN ACT ALLOWING LOCAL GOVERNMENTS TO RETURN INTEREST FROM INVESTMENTS AND DEPOSITS TO A SPECIFIED FUND IN PROPORTION TO THAT FUND'S PARTICIPATION IN AN INVESTMENT OR DEPOSIT RATHER THAN DEPOSITING THE INTEREST IN THE GENERAL FUND; AMENDING SECTION 7-6-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-204, MCA, is amended to read:

"7-6-204. Crediting of interest — exceptions. (1) ~~Unless otherwise provided by law or by the terms of a gift, grant, or donation, interest~~ *Interest* paid and collected on deposits or investments must be credited to the general fund of the county, city, or town to whose credit the funds are deposited *unless otherwise provided:*

- (a) *by law;*
- (b) *by terms of a gift, grant, or donation; or*
- (c) *by subsections (2) and (3).*

(2) ~~Interest~~ *Subject to subsection (1), interest* paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, part 21 or 23, must be credited to the account of that fire district or department.

(3) ~~Interest~~ *Subject to subsection (1), interest* paid and collected on the deposits or investments of *any fund separately created and accounted for by a county, city, or town* ~~the county road fund or county bridge fund~~ may be credited to the ~~county road fund or county bridge~~ *separately created fund proportionately to each fund's participation in the deposit or investment."*

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved April 3, 2003

CHAPTER NO. 215

[HB 350]

AN ACT EXPANDING THE ABILITY OF HIGHWAY PATROL OFFICERS TO MAKE ARRESTS OF PERSONS IN THE POSSESSION OF DANGEROUS DRUGS OR DRUG PARAPHERNALIA; SUBSTITUTING THE TERM "DANGEROUS DRUGS" FOR "NARCOTICS"; AND AMENDING SECTION 44-1-1001, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-1001, MCA, is amended to read:

"44-1-1001. Offenses for which patrol officers may make arrests. (1) The highway patrol chief and all patrol officers may make arrests for the offenses listed in subsection (2) under the following circumstances:

- (a) the offense is committed in the presence of the chief or any patrol officer;

(b) the offense is committed in a rural district and a request for assistance is made by a peace officer; or

(c) the offense is committed in a city or town with a population of less than 2,500 and a request for assistance is made by a peace officer or the mayor of the city or town.

(2) Offenses for which arrests may be made under subsection (1) are:

(a) deliberate homicide;

(b) assault with a deadly weapon;

(c) arson;

(d) criminal mischief;

(e) burglary;

(f) theft;

(g) kidnapping;

~~(h) illegal transportation of narcotics; or~~

(h) possession of dangerous drugs;

(i) possession of drug paraphernalia; or

~~(j)~~(j) violation of the Dyer Act regarding the transportation of stolen automobiles.”

Approved April 3, 2003

CHAPTER NO. 216

[HB 420]

AN ACT DECREASING THE FEE PAID BY COMMERCIAL APPLICATORS, PESTICIDE DEALERS, AND GOVERNMENT AGENCIES FOR THE WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM; REPEALING THE TERMINATION OF THE WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM, THE ASSESSMENT OF FEES FOR FUNDING THE PROGRAM, AND THE DEPOSIT AND USE OF FEES BY THE DEPARTMENT OF AGRICULTURE; AMENDING SECTIONS 80-8-203, 80-8-207, AND 80-8-213, MCA; REPEALING SECTION 14, CHAPTER 465, LAWS OF 1993, AND CHAPTER 362, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-203, MCA, is amended to read:

“80-8-203. Commercial applicator. (1) It is unlawful for a person to engage in the business of applying pesticides for another without a pesticide applicator’s license obtained from the department of agriculture. An application for a pesticide applicator’s license must be accompanied by a fee of \$45. The provisions of this subsection do not apply to a person employed only to operate equipment used for the application of a pesticide if the person has no financial interest or other control over the equipment other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators must be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided in 80-8-205.

(3) A veterinarian licensed as provided in Title 37, chapter 18, part 3, is not required to be licensed to apply nonrestricted pesticides, provided that the veterinarian registers with the department each year. The veterinarian must meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules.

(4) An applicator is responsible for the use of any pesticide by an operator or employee under the applicator's supervision or employment.

(5) The department shall assess an additional annual license fee of ~~30~~ \$10 on applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. *The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year.* Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112. ~~(Subsection (5) terminates December 31, 2003—sec. 1, Ch. 362, L. 1999.)~~

Section 2. Section 80-8-207, MCA, is amended to read:

"80-8-207. Dealers. (1) It is unlawful for a person to sell, offer for sale, deliver, or have delivered within the state a pesticide without first obtaining a license from the department for each calendar year or portion of a year. A separate dealer's license and fee is required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide field personnel or salespeople employed directly out of the same location or outlet and under a licensed dealer are not required to obtain a license. The dealer shall furnish the department with the names and addresses of its field personnel and salespeople selling pesticides within the state.

(2) The application for a license must be accompanied by a fee of \$45. Dealers applying for renewal of a license shall do so on or before March 1 of the calendar year. A dealer applying for renewal of a license after March 1 must be assessed a \$25 late licensing fee.

(3) The dealer shall require the purchaser of a restricted pesticide to exhibit the purchaser's license or permit issued under authority of this chapter, or the dealer may verify, under procedures authorized by the department, the purchaser's license or permit through a department list or by electronic means before completing a sale. The department may adopt rules concerning dealer verification of licenses and permits.

(4) The department shall assess an additional annual license fee of ~~30~~ \$10 on dealers to fund the waste pesticide and pesticide container collection, disposal, and recycling program. *The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year.* Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112.

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 are not required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians register with the department each year. However, the certified pharmacies and veterinarians shall meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules. ~~(Subsection (4) terminates December 31, 2003—sec. 1, Ch. 362, L. 1999.)~~

Section 3. Section 80-8-213, MCA, is amended to read:

“80-8-213. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agencies are subject to the provisions of this chapter and rules adopted under this chapter concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies are subject to the provisions of 80-8-203 through 80-8-208.

(2) The department shall issue a limited commercial applicator's or dealer's license for an annual fee of \$50, which is valid only when an applicator or dealer is applying or selling pesticides for a state agency, municipal corporation, or any other governmental agency, provided that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

(3) (a) A governmental agency shall pay for each of its first four employee applicators:

(i) an annual applicator's fee of \$50; and

(ii) an additional fee of ~~\$25~~ \$10 to fund the waste pesticide and pesticide container collection, disposal, and recycling program. *The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year.*

(b) A governmental agency shall pay for each additional employee applicator:

(i) an annual applicator's fee of \$5; and

(ii) an additional fee of ~~\$15~~ \$10 to fund the waste pesticide and pesticide container collection, disposal, and recycling program. *The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year.*

(c) A government agency may not be required to pay more than \$600 annually for the licensing of employees as applicators and operators.

(d) Fees collected pursuant to this subsection (3) for the purpose of funding the waste pesticide and pesticide container collection, disposal, and recycling program must be deposited in the state special revenue account pursuant to 80-8-112.

(4) Government employees becoming certified applicators only to qualify for conducting pesticide education courses may not be charged a license fee but are limited to providing the courses. Government operators are subject to rules

adopted pursuant to 80-8-205, including the license fee. ~~(Subsections (3)(a)(ii), (3)(b)(ii), and (3)(d) terminate December 31, 2003—sec. 1, Ch. 362, L. 1999.)~~

Section 4. Repealer. Section 14, Chapter 465, Laws of 1993, and Chapter 362, Laws of 1999, are repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2003

CHAPTER NO. 217

[HB 443]

AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; CLARIFYING THE POLICY OF THE MONTANA MAJOR FACILITY SITING ACT; MODIFYING THE DEFINITION OF "CERTIFICATE"; MODIFYING THE INFORMATION REQUIREMENTS FOR APPLICATIONS; ELIMINATING THE REQUIREMENT THAT A COPY OF AN APPLICATION BE SENT TO OTHER LOCAL, STATE, AND FEDERAL GOVERNMENTAL ENTITIES; MODIFYING PUBLIC NOTICE REQUIREMENTS; REVISING THE FILING FEE SCALE; REDUCING CERTAIN TIME REQUIREMENTS OF THE SITING LAWS; QUALIFYING THE USE OF MONTANA ENVIRONMENTAL POLICY ACT DOCUMENTS; INCLUDING ECONOMIC IMPORTANCE AND BENEFITS IN DETERMINING THE SIGNIFICANCE OF A FACILITY'S IMPACT; REVISING THE DEPARTMENT'S APPROVAL CRITERIA FOR CERTAIN FACILITIES; CLARIFYING REQUIREMENTS FOR COMMENCEMENT OF CONSTRUCTION; AMENDING SECTIONS 7-1-111, 69-3-1205, 75-20-102, 75-20-104, 75-20-201, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-223, 75-20-231, 75-20-232, 75-20-301, 75-20-303, 85-2-124, 85-2-607, 85-15-107, AND 90-6-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

- (1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;
- (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;
- (3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;
- (4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;
- (5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of ~~environmental compatibility and public need compliance~~;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife); and

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction."

Section 2. Section 69-3-1205, MCA, is amended to read:

"69-3-1205. Public comment. (1) The commission shall conduct a public meeting for the purpose of receiving comment on a plan. The commission or the department of public service regulation may comment on the plan. A comment by the commission or the department may not be construed as preapproval by the commission of rate treatment for any proposed resource.

(2) The department of environmental quality:

(a) shall review a plan and comment on the need for new resources, the alternatives evaluated to meet the need, the environmental implications of the resource choices, and other related issues that it considers important. The department shall coordinate and deliver all comments from other executive branch agencies.

(b) may use a plan in the development of studies for a specific energy facility for which an application for a certificate of ~~environmental compatibility and public need compliance~~ is submitted under Title 75, chapter 20.

(3) The consumer counsel shall review and may comment on a plan."

Section 3. Section 75-20-102, MCA, is amended to read:

"75-20-102. Policy and legislative findings. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and

degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) It is also constitutionally declared in the state of Montana that the inalienable rights of the citizens of this state include the right to pursue life's basic necessities, to enjoy and defend life and liberty, to acquire, possess, and protect property, and to seek safety, health, and happiness in all lawful ways. The balancing of these constitutional rights is necessary in order to maintain a sustainable quality of life for all Montanans.

~~(2)(3) The legislature finds that the construction of additional electric transmission facilities, pipeline facilities, or geothermal facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of electric transmission facilities, pipeline facilities, or geothermal facilities will not produce unacceptable adverse effects on the environment and upon the citizens of this state by providing are in compliance with state law and that a an electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within this state without a certificate of environmental compatibility compliance acquired pursuant to this chapter.~~

~~(3)(4) The legislature also finds that it is the purpose of this chapter to:~~

- ~~(a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;~~
- ~~(b) ensure consideration of socioeconomic impacts;~~
- ~~(c) provide citizens with the opportunity to participate in facility siting decisions; and~~
- ~~(d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter."~~

Section 4. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.
- (2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.
- (3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.
- (4) "Board" means the board of environmental review provided for in 2-15-3502.
- (5) "Certificate" means the certificate of ~~environmental compatibility compliance~~ issued by the department under this chapter that is required for the construction or operation of a facility.
- (6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 5. Section 75-20-201, MCA, is amended to read:

"75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities. (1) Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of ~~environmental compatibility~~ *compliance* issued with respect to the facility by the department.

(2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter.

(6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction."

Section 6. Section 75-20-211, MCA, is amended to read:

"75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under this chapter and for the permits required under the laws administered by the department in the form that is required under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any *preexisting* studies that have been made of the ~~environmental~~ impact of the facility;

(iii) for facilities defined in 75-20-104(8)(a) and (8)(b), a statement explaining the need for the facility, a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each

location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) (A) for facilities as defined in 75-20-104(8)(a) and (8)(b), baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104(8)(c), baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vi) other information that the applicant considers relevant or that the department by order or rule may require.

(b) ~~A~~ If a copy or copies of the studies referred to in subsection (1)(a)(ii) ~~must be~~ are filed with the department, ~~if ordered, and the copy or copies~~ must be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination that are physically and directly attached to each other and are operationally a single operating entity.

~~(3) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:~~

~~(a) environmental quality council;~~

~~(b) department of public service regulation;~~

~~(c) department of fish, wildlife, and parks;~~

~~(d) department of natural resources and conservation;~~

~~(e) department of transportation.~~

~~(4)~~(3) The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.

~~(5)~~(4) An application must also be accompanied by proof that public notice of the application was given to persons residing in the ~~area~~ county in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 7. Section 75-20-213, MCA, is amended to read:

"75-20-213. Supplemental material — amendments. (1) An application for an amendment of an application or a certificate must be in the form and contain the information that the department by rule or by order prescribes. Notice of an application must be given as set forth in 75-20-211(3) ~~through (5)~~ and (4).

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department or the agencies listed in 75-20-216(6) from carrying out their duties and responsibilities under this chapter, the department may require additional filing fees *and additional amendment application review time.* *The total review time may not exceed 9 months from the date the*

department accepts a completed application for amendment. ~~as the department determines necessary, or the department may require a new application and filing fee.~~

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required is conclusive."

Section 8. Section 75-20-215, MCA, is amended to read:

"75-20-215. Filing fee — accountability — refund — use. (1) (a) A filing fee must be deposited in the state special revenue fund for the use of the department in administering Title 75, chapter 1, and this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter. The fee may not exceed the following scale based upon the estimated cost of the facility:

- (i) ~~4%~~ 6% of any estimated cost up to \$1 million; plus
- (ii) 1% of any estimated cost over \$1 million and up to ~~\$20~~ \$5 million; plus
- (iii) ~~0.5%~~ 0.8% of any estimated cost over ~~\$20~~ \$5 million and up to ~~\$100~~ \$10 million; plus
- ~~(iv) 0.25% of any amount of estimated cost over \$100 million and up to \$300 million; plus~~
- ~~(v) 0.125% of any amount of estimated cost over \$300 million and up to \$1 billion; plus~~
- (iv) 0.5% of any estimated cost over \$10 million and up to \$20 million; plus
- (v) 0.25% of any estimated cost over \$20 million and up to \$100 million; plus
- (vi) 0.125% of any estimated cost over \$100 million and up to \$500 million; plus
- (vii) 0.05% of any estimated cost over \$500 million and up to \$1 billion; plus
- ~~(vi)~~(viii) 0.05% 0.025% of any amount of estimated cost over \$1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required under this chapter or required for preparation of an environmental impact statement or assessment under the Montana or national environmental policy acts. The applicant may submit the information to the department, together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services, and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under a contract must be credited against the fee payable pursuant to this section. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be

sufficient to enable the department, the board, and the agencies listed in 75-20-216(6) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of money expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenue derived from filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."

Section 9. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an ~~intensive study and~~ evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided in 75-1-208(4)(b) and 75-20-231, the department shall issue within 9 months following the date of acceptance of an application any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the board

and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-1-208(4)(b) and 75-20-231, within 9 months following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, ~~and an~~. An environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, ~~if any~~ may be included in the department findings if compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and operation of a proposed facility. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 10. Section 75-20-223, MCA, is amended to read:

"75-20-223. Board review of department decisions. (1) A person aggrieved by the final decision of the department on an application for a certificate or the issuance of an air or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6.

(2) A person aggrieved by the final decision of the department on an application for amendment of a certificate may within 15 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6.

(3) *A person aggrieved by the department's decision not to include an environmental impact statement or analysis in the department's findings pursuant to 75-20-216 may within 30 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6.*"

Section 11. Section 75-20-231, MCA, is amended to read:

"75-20-231. Expedited review. (1) Except as provided in 75-1-208(4)(b), the department shall issue a certification decision within ~~120~~ 90 days from the date on which an application is considered complete for a facility that:

(a) is unlikely to result in significant adverse environmental impacts based on the criteria listed in 75-20-232; or

(b) is presently in existence and proposed for upgrade, reconstruction, or relocation and is unlikely to result in significant impacts pursuant to 75-20-232.

(2) A facility that qualifies for expedited review is exempt from undergoing an alternative siting study, except as provided in 75-1-201."

Section 12. Section 75-20-232, MCA, is amended to read:

“75-20-232. Criteria for identifying proposed facilities that qualify for expedited review. (1) In order for a facility to qualify for expedited review under 75-20-231, the department shall make a significance determination of the impacts associated with a proposed facility. This determination is the basis of the department’s decision concerning whether the proposed facility qualifies for expedited review.

(2) The department shall consider the following criteria in determining the significance of each impact that the proposed facility has on the quality of the human environment:

(a) the severity, duration, geographic extent, and frequency of occurrence of the impact;

(b) (i) the probability that the impact will occur if the proposed action occurs; or

(ii) reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;

(c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;

(d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;

(e) the importance to the state and to society of each environmental resource or value that would be affected;

(f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or to a decision in principle about future actions;

(g) potential conflict with local, state, or federal laws, requirements, or formal plans; ~~and~~

(h) the degree to which the impacts on the human environment are likely to create a high level of public concern; *and*

(i) *the economic importance and benefits to the state and the local community of the proposed facility.*

(3) An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, expedited review is required.”

Section 13. Section 75-20-301, MCA, is amended to read:

“75-20-301. Decision of department — findings necessary for certification. (1) Within 30 days after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) in the case of an electric, gas, or liquid transmission line or aqueduct:

- (i) what part, if any, of the line or aqueduct will be located underground;
- (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and
- (iii) that the facility will serve the interests of utility system economy and reliability;
- (e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;
- (f) that the facility will serve the public interest, convenience, and necessity;
- (g) that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and
- (h) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands.

(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:

- (a) the items listed in subsections (1)(a) and (1)(b);
- (b) the benefits to the applicant and the state resulting from the proposed facility;
- (c) the effects of the economic activity resulting from the proposed facility;
- (d) the effects of the proposed facility on the public health, welfare, and safety;
- (e) any other factors that it considers relevant.

(3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

- (a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; ~~or~~ and
- (b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, ~~do not pose any threat of serious injury or damage to~~ will not result in:
 - (i) a violation of a law or standard that protects the environment; or
 - ~~(ii) the social and economic conditions of inhabitants of the affected area; or~~
 - ~~(iii) (ii) a violation of a law or standard that protects the public health, and safety, or welfare of area inhabitants.~~

(4) For facilities defined in ~~77-20-104(8)~~ 75-20-104, if the department cannot make the findings required in ~~75-20-301 this section,~~ it shall deny the certificate."

Section 14. Section 75-20-303, MCA, is amended to read:

“75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the department shall issue an opinion stating its reasons for the action taken.

(2) If the department has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

(3) A certificate issued by the department must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement must include but is not limited to analysis of the following information:

(i) the environmental impact of the proposed facility; and

(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The department shall issue as part of the certificate the following time limits:

(i) For a facility as defined in 75-20-104(8)(a) that is more than 30 miles in length and for a facility defined in 75-20-104(8)(b), construction must be completed within 10 years.

(ii) For a facility as defined in 75-20-104(8)(a) that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in 75-20-104(8)(c), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

(d) Construction may begin immediately upon issuance of a certificate unless the department finds that there is substantial and convincing evidence that a delay in the commencement of construction is necessary and should be established for a particular facility.”

Section 15. Section 85-2-124, MCA, is amended to read:

“85-2-124. Fees for environmental impact statements. (1) Whenever the department determines that the filing of an application (or a combination of applications) for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the

Montana Environmental Policy Act and the application ~~for combination of applications~~ involves the use of 4,000 or more acre-feet per year and 5.5 or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the applicant in writing within 90 days of receipt of a correct and complete application ~~for a combination of applications~~ if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as ~~herein~~ provided *in this section*. The maximum fee that ~~shall~~ *must* be paid to the department may not exceed the fees set forth in the following declining scale: 2% of the estimated cost up to \$1 million; plus 1% of the estimated cost over \$1 million and up to \$20 million; plus 1/2 of 1% of the estimated cost over \$20 million and up to \$100 million; plus 1/4 of 1% of the estimated cost over \$100 million and up to \$300 million; plus 1/8 of 1% of the estimated cost over \$300 million. The fee ~~shall~~ *must* be deposited in the state special revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the ~~application(s)~~ *application or applications*. Any amounts paid by the applicant but not actually expended by the department ~~shall~~ *must* be refunded to the applicant.

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:

(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;

(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any ~~such contract or contracts~~;

(c) the use or nonuse of a fee or any part ~~thereof~~ *of a fee* paid to the department by an applicant.

(4) Any payments made to the department or any third party by an applicant under any ~~such contract or contracts~~ *shall* ~~must~~ be credited against any fee ~~that the applicant must is required to pay hereunder~~ *under this section*. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.

(5) ~~No~~ A fee as prescribed by this section may *not* be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of ~~environmental compatibility or public need compliance~~ pursuant to the Montana Major Facility Siting Act and the appropriation or use of water involved in the ~~application(s)~~ *application or applications* for permit or approval has been or will be studied by the department pursuant to that act.

(6) This section ~~shall apply~~ *applies* to all applications, pending or ~~hereinafter~~ filed, for which the department has not, as of April 9, 1975, commenced writing an environmental impact statement. This section ~~shall~~ *does* not apply to any application; ~~if the fee for which the application would not exceed \$2,500.~~

(7) Failure to submit the fee as required by this section ~~shall void~~ voids the application(s) *application or applications*.

(8) The department may in its discretion rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement.”

Section 16. Section 85-2-607, MCA, is amended to read:

“85-2-607. Utility facilities. This part does not apply to applications to appropriate water for use by a utility facility for which a certificate of ~~environmental compatibility and public need compliance~~ is granted pursuant to the Montana Major Facility Siting Act.”

Section 17. Section 85-15-107, MCA, is amended to read:

“85-15-107. Exemptions. (1) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-502, and 85-15-503 do not apply to:

(a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit;

(b) federal dams and reservoirs;

(c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission; or

(d) dams that are required to obtain a certificate of ~~environmental compatibility and public need compliance~~ pursuant to 75-20-201 for the period during which the dam is subject to the certificate.

(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401, 85-15-502, and 85-15-503 do not apply to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency.

(3) The provisions of 85-15-305 do not apply to dams and reservoirs at a national priority list site as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510.”

Section 18. Section 90-6-207, MCA, is amended to read:

“90-6-207. Priorities for impact grants. (1) The department of commerce shall biennially designate:

(a) each county, incorporated city and town, school district, and other governmental unit that has had or expects to have as a result of the impact of coal development a net increase or decrease in estimated population of at least 10% over one of the 3-year periods specified in subsection (4);

(b) each county and all local governmental units within each county in which:

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of environmental quality for a project within the county that will establish a new coal mine to produce at least 300,000 tons a year and that the department of commerce determines will commence production within 2 years;

(ii) the department of commerce has determined that the production of an existing mine will increase or decrease by at least 1 million tons a year and that

the new, expanded, or reduced production will commence within 2 years of the designation;

(iii) a newly constructed railroad serves a new, existing, or expanding coal mine; or

(iv) ~~a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act has been granted by the board of environmental review~~ *an air quality permit has been issued by the department of environmental quality* for a new steam-generating or other new coal-burning facility that will consume at least 1 million tons a year of Montana-mined coal and for which the department of commerce determines the construction or operation will commence within 2 years of the designation;

(c) each local governmental unit located within 100 miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection (1)(b)(i), (1)(b)(ii), or (1)(b)(iv); and

(d) each local governmental unit in which:

(i) a mine that has produced 300,000 tons or more of coal a year has ceased all significant mining or is scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under ~~a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act~~ *an air quality permit issued by the department of environmental quality* and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

(a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and

(b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.

(3) Except as provided in 90-6-205(4)(b), the board may not award more than 50% of the funds appropriated to it each year for grants to governmental units and state agencies for meeting the needs caused by an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex to local governmental units other than those governmental units designated under subsection (1).

(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(5) Attention should be given by the board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth or decline problems.

(6) All funds appropriated under this part are for use related to local impact.

(7) All designations based on an increase in coal development or in the consumption of coal by a coal-using energy complex made under subsection (1)(a), (1)(b), or (1)(c) must be for 1 year. A designation may not continue after the department of commerce determines that the mine, railroad, or facility that provided the basis for a designation is contributing sufficient tax revenue to the designated governmental unit to meet the increased costs of providing the services necessitated by the development of the mine, railroad, or facility. However, nondesignated local governmental units continue to be eligible for coal impact grants of not more than 50% of the funds appropriated to the board for grants in circumstances in which an impact exists in a community or area directly affected by:

(a) the operation of a coal mine or a coal-using energy complex; or

(b) the cessation or reduction of coal mining activity or of the operation of a coal-using energy complex.”

Section 19. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 20. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2003

CHAPTER NO. 218

[HB 548]

AN ACT ESTABLISHING A FEDERAL SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE SECRETARY OF STATE FOR MONEY RECEIVED UNDER THE FEDERAL HELP AMERICA VOTE ACT OF 2002; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Special account for federal Help America Vote Act. (1) There is a federal special revenue account in the state treasury to the credit of the office of the secretary of state.

(2) Money provided to the state for the purposes of implementing provisions of Public Law 107-252, the Help America Vote Act of 2002, must be deposited in the account.

(3) Money in the account may be used only for the purposes specified by the federal law under which the money was provided.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 1, part 2, and the provisions of Title 13, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2003

CHAPTER NO. 219

[HB 583]

AN ACT AUTHORIZING A COUNTY AND A MUNICIPALITY TO ESTABLISH A TRANSPORTATION IMPROVEMENT AUTHORITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of a transportation improvement authority is to blend the interests of local, state, and federal governments with the interests of the general public and the business community to build, modify, or improve transportation facilities and systems within its jurisdiction.

Section 2. Transportation improvement authority. (1) A county and a municipality within a county may, by joint resolution, create a transportation improvement authority authorized to exercise its functions upon the appointment and qualification of the first commissioners.

(2) (a) Except as provided in subsection (3), the resolution creating the transportation improvement authority must create a board of nine commissioners appointed as follows:

- (i) two county officials appointed by the county commissioners;
 - (ii) two public members appointed by the county commissioners;
 - (iii) two municipal officials appointed by the governing body of the municipality;
 - (iv) two public members appointed by the governing body of the municipality; and
 - (v) one member appointed by the governor.
- (b) The public members must be knowledgeable about transportation issues.
- (c) The resolution must state the terms of the commissioners and their compensation, if any.

(3) A transportation improvement authority may be increased to serve one or more additional counties or municipalities if each additional county or municipality, each county and municipality included in the authority, and the commissioners of the authority adopt a joint resolution consenting to the increase. The number of additional commissioners to be appointed must be provided for in the joint resolution.

(4) A transportation improvement authority may be dissolved if each municipality and county included in the authority and the commissioners of the authority consent to the dissolution. Provisions must be made for the retention or disposition of the authority's assets and liabilities.

(5) A county or municipality may not adopt a resolution authorized by this section without a public hearing. Notice must be given as provided in 7-1-2121 or 7-1-4127.

Section 3. Commissioners. (1) The powers of each transportation improvement authority are vested in the commissioners. A majority of the commissioners of an authority constitute a quorum for the purpose of conducting the business of the authority and exercising its powers for all other purposes. Action may be taken by the authority upon a vote of the majority of the commissioners present.

(2) There must be elected a presiding officer and vice presiding officer from among the commissioners. An authority shall employ an executive director and may employ other personnel as necessary. An authority shall determine the qualifications, duties, and compensation of its employees.

(3) Each commissioner shall hold office until a successor is appointed and has qualified. The certificate of the appointment or reappointment of a commissioner must be filed with the authority.

Section 4. Cooperation of county and municipality. For the purpose of cooperating in the planning, construction, or operation of transportation facilities, a county and a municipality for which a transportation improvement authority has been created may:

(1) lend or donate money to the authority;

(2) provide that all or a portion of the taxes or funds available or required by law to be used by the county or municipality for transportation purposes be transferred to the authority as the funds become available;

(3) furnish facilities or improvements that the county or municipality is empowered to provide in connection with the transportation facilities;

(4) dedicate, sell, convey, or lease an interest in property or grant easements, licenses, or other rights and privileges to the authority;

(5) do all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, construction, or operation of transportation facilities; and

(6) enter into agreements with the authority respecting action to be taken by the county and the municipality pursuant to the provisions of this section.

Section 5. General powers of the authority. A transportation improvement authority has all the powers necessary to carry out the purposes of [sections 1 through 7], including the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute contracts and other instruments and take other action as may be necessary to carry out the purposes of [sections 1 through 7];

(3) receive and disburse federal, state, and other public or private funds made available by grant, loan, contribution, or other source to accomplish the purposes of [sections 1 through 7]. Federal money must be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the state.

(4) acquire by purchase, gift, devise, lease, or other means real or personal property or any interest in property; and

(5) sell, lease, or otherwise dispose of real or personal property acquired pursuant to [sections 1 through 7]. The disposal must be in accordance with the laws of this state governing the disposition of public property.

Section 6. Rules. (1) A transportation improvement authority may adopt, amend, and repeal reasonable resolutions, rules, and orders as it considers necessary for its own administration, management, and governance, as well as for the management, governance, and use of a transportation facility owned by the authority or under its control.

(2) A rule, order, or standard prescribed by the authority may not be inconsistent with or contrary to an act of the congress of the United States or a regulation promulgated or standard established pursuant to an act of congress.

(3) The authority shall keep a copy of its rules on file for public inspection at the principal office of the authority.

Section 7. Tax exemption. Property in this state acquired for a transportation improvement authority for transportation purposes pursuant to the provisions of [sections 1 through 7] and income derived by the authority from the ownership, operation, or control of property are exempt from taxation to the same extent as other property used for public purposes.

Section 8. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 7, chapter 14, and the provisions of Title 7, chapter 14, apply to [sections 1 through 7].

Approved April 3, 2003

CHAPTER NO. 220

[HB 639]

AN ACT PROVIDING THAT FINES FOR VIOLATIONS OF MOTOR VEHICLE OR PARKING REGULATIONS ON A UNIVERSITY SYSTEM CAMPUS BE ASSESSED IN ACCORDANCE WITH A SCHEDULE THAT IS APPROVED BY THE BOARD OF REGENTS; REMOVING THE \$10 PER OFFENSE CAP ON FINES; AND AMENDING SECTION 20-25-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-312, MCA, is amended to read:

“20-25-312. Motor vehicle regulation — enforcement of regulations — appeals. (1) The regents may authorize the president of each unit to:

(a) assess fees for parking on campus subject to the approval of the regents after the regents' consultation with the respective student governing body of the unit;

(b) assess fines in accordance with a published schedule *approved by the regents* for violations of motor vehicle or parking regulations of each unit ~~in an amount not to exceed \$10 per offense~~;

(c) order the removal of vehicles parked in violation of motor vehicle regulations of each unit at the expense of the violator;

(d) establish a system of appeals at each unit concerning parking violations;

(e) withhold the amount of any unpaid parking fine from any amount owing any student, employee, or faculty member, subject to the provisions of 17-4-105;

(f) prohibit a student from registering if ~~said~~ the student has unpaid parking assessments or fines outstanding resulting from on-campus motor vehicle or parking violations within the previous year.

(2) The proceeds from fines and fees collected ~~shall~~ *must* be remitted to the unit at which collections are made ~~to~~ *and must* be used for appropriate maintenance and construction of parking facilities and for traffic control.”

Approved April 3, 2003

CHAPTER NO. 221

[SB 28]

AN ACT GENERALLY REVISING THE LAWS RELATING TO DEFERRED DEPOSIT LOANS; CLARIFYING THE DEFINITION OF “FINANCIAL INSTITUTIONS”; PROVIDING FOR CIVIL PENALTIES FOR CERTAIN VIOLATIONS OF THE MONTANA DEFERRED DEPOSIT LOAN ACT; REQUIRING THE NAME, ADDRESS, AND PHONE NUMBER OF A CONSUMER TO BE INCLUDED ON THE WRITTEN AGREEMENT BETWEEN THE LICENSEE AND CONSUMER WITH RESPECT TO A DEFERRED DEPOSIT LOAN; ESTABLISHING THAT CERTAIN DAMAGES ARE NOT AVAILABLE TO A LICENSEE FOR INSUFFICIENT FUNDS CHECKS OR ELECTRONIC DEDUCTIONS FOR WHICH THERE ARE INSUFFICIENT FUNDS; PROVIDING THAT THE DEFINITION OF “CONSUMER LOAN” DOES NOT INCLUDE A DEFERRED DEPOSIT LOAN; INCREASING THE INSUFFICIENT FUNDS FEE FROM \$15 TO \$30; REQUIRING A VIOLATION FOR CIVIL REMEDIES TO BE INTENTIONAL; AMENDING SECTIONS 31-1-704, 31-1-712, 31-1-721, 31-1-722, 31-1-724, AND 32-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-704, MCA, is amended to read:

“31-1-704. Scope. (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to:

(a) ~~banks, savings and loan associations, credit unions, or other state or federally regulated~~ financial institutions *as defined in 32-8-502;*

(b) retail sellers who cash checks incidental to or independent of a sale and who do not charge more than \$2 ~~per~~ a check for the service; or

(c) a collection agency licensed to do business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender.”

Section 2. Section 31-1-712, MCA, is amended to read:

“31-1-712. License revocation — penalty. (1) If the department finds, after due notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that ~~a~~ *any person*, licensee, or ~~an~~ officer, agent, employee, or representative of the licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to

make required reports to the department, or has furnished false information to the department, the department may *impose a civil penalty not to exceed \$1,000 for each violation and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee.*

(2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.”

Section 3. Section 31-1-721, MCA, is amended to read:

“31-1-721. Required disclosures — loan agreement. (1) Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

(a) explains, in simple language, all of the consumer’s rights and responsibilities in a deferred deposit loan transaction;

(b) includes a telephone number to the department’s office that handles concerns or complaints by consumers; and

(c) informs consumers that the department’s office can provide information about whether a lender is licensed and other legally available information.

(2) Licensees shall provide consumers with a written agreement on a form specified or approved by the department that can be kept by the consumer, which must include the following information:

(a) the name, address, and phone number of the licensee making the deferred deposit loan and the initials or other written means of identifying the individual employee who signs the agreement on behalf of the licensee;

(b) *the name, address, and phone number of the consumer obtaining the deferred deposit loan;*

~~(b)~~(c) an itemization of the fees and interest charges to be paid by the consumer;

~~(c)~~(d) a clear description of the consumer’s payment obligations under the loan; and

~~(d)~~(e) in a manner that is more conspicuous than the other information provided in the loan document and that is in at least 14-point bold typeface, a statement that “you cannot be prosecuted in criminal court for collection of this loan”. The statement must be located immediately preceding the signature of the consumer.”

Section 4. Section 31-1-722, MCA, is amended to read:

“31-1-722. Prohibited and permitted fees — attorney fees and costs.

(1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(2) A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan.

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed ~~\$15~~ \$30. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this

subsection is a licensee's exclusive charge for late payment. *A licensee may not collect damages under 27-1-717(3) for an insufficient funds check.*

(4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on which the payment is due, a licensee may charge a fee, not to exceed ~~\$15~~ \$30. Only one fee may be collected pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. *A licensee may not collect damages under 27-1-717(3) for an electronic deduction for which there are insufficient funds.*

(5) If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered into pursuant to this part."

Section 5. Section 31-1-724, MCA, is amended to read:

"31-1-724. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom this part applies.

(2) Any *intentional* violation of this part constitutes an unfair or deceptive trade practice.

(3) Any person found to have *intentionally* violated this part is liable to the consumer for actual and consequential damages, plus statutory damages of \$1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of this part.

(5) The consumer may bring a class action suit to enforce this part.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of this part."

Section 6. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include:

(i) loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f-7a; or

(ii) *deferred deposit loans provided for in Title 31, chapter 1, part 7.*

(2) "Consumer loan business" means the business of making consumer loans as a licensee under this chapter.

(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(4) "License" means one or both of the licenses provided for by this chapter.

(5) "Licensee" means the person holding a license.

(6) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business."

Section 7. Effective date. [This act] is effective July 1, 2003.

Approved April 3, 2003

CHAPTER NO. 222

[SB 75]

AN ACT PROVIDING FOR THE MONTANA NATIONAL GUARD CIVIL RELIEF ACT; DEFINING TERMS; AUTHORIZING COURTS TO PROVIDE CERTAIN NATIONAL GUARD SERVICE MEMBERS RELIEF FROM CERTAIN CIVIL ACTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 4] may be cited as the "Montana National Guard Civil Relief Act".

Section 2. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Active duty" means at least 30 consecutive days of full-time state active duty ordered by the governor pursuant to Article VI, section 13, of the Montana constitution or of full-time national guard duty, as defined in 32 U.S.C. 101.

(2) "Dependent" means the spouse or minor child of a service member or any other person legally dependent on the service member for support.

(3) "Military service" means active duty with a Montana army or air national guard military unit.

(4) "Service member" means any member of the Montana army or air national guard serving on active duty.

Section 3. Relief from actions related to mortgage, lease, or rental payments. (1) A civil action, as described in Title 25, chapter 1, part 1, against a service member or a service member's dependent with respect to the member's or dependent's primary residence for nonpayment on a mortgage, lease, or rental agreement may be stayed by a court, or the payments due may be adjusted.

(2) With respect to an action described in subsection (1), upon application or by its own action, a court may do one or more of the following:

(a) stay the action for up to 3 months unless, in the opinion of the court, the ability of the service member or the service member's dependent to make the required payments is not materially affected by the service member's active duty; or

(b) adjust the mortgage, lease, or rental payment to be made by an amount the court determines to be reasonable, taking into consideration the service member's active duty status; or

(c) order the service member or the service member's dependent to pay an amount specified by the court over the time period specified by the court upon the service member's release from active duty.

Section 4. General relief from court actions. If a plaintiff or a defendant in any civil action, as described in Title 25, chapter 1, part 1, is a service member, the court may stay the proceedings if the service member or other person on the service member's behalf makes a request in writing to the court, unless the court determines on the record that the ability of the service member to pursue an action as a plaintiff or to conduct the defense as a defendant is not materially affected by the service member's military service.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1 through 4].

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2003

CHAPTER NO. 223

[SB 84]

AN ACT ELIMINATING THE REQUIREMENT THAT THE BOARD OF OIL AND GAS CONSERVATION REPORT TO THE REVENUE OVERSIGHT COMMITTEE REGARDING ENHANCED RECOVERY PROJECTS, NUMBERS OF HORIZONTALLY COMPLETED WELLS, AND METHODOLOGY FOR DETERMINING OIL PRODUCTION DECLINE RATES; AND REPEALING SECTION 21, CHAPTER 9, SPECIAL LAWS OF NOVEMBER 1993.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 21, Chapter 9, Special Laws of November 1993, is repealed.

Approved April 3, 2003

CHAPTER NO. 224

[SB 109]

AN ACT GENERALLY REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; ADDING A PHARMACY TECHNICIAN TO THE BOARD OF PHARMACY; DEFINING "PHYSICIAN"; PROVIDING LICENSING AND OTHER REQUIREMENTS FOR DOCTORS OF OSTEOPATHY AND RECOGNIZING THEIR STATUS AS PHYSICIANS; MODIFYING REQUIREMENTS FOR PHYSICIAN RENEWAL FEES; MODIFYING REQUIREMENTS FOR LICENSE APPLICATIONS FOR DENTISTS; PROVIDING THAT LICENSEES UNDER THE BOARD OF MEDICAL EXAMINERS AND THE BOARD OF DENTISTRY MAY BE REFERRED TO AN IMPAIRMENT PROGRAM; PROVIDING THAT CERTAIN MEDICAL LICENSES THAT ARE NOT TIMELY RENEWED MAY BE CONSIDERED LAPSED RATHER THAN REVOKED; MODIFYING CHIROPRACTIC LICENSING AND EXAMINATION REQUIREMENTS; MODIFYING

LICENSE RENEWAL REQUIREMENTS FOR ACUPUNCTURISTS; REMOVING THE LIMITATION ON THE REEXAMINATION ELIGIBILITY PERIOD FOR HEARING AID DISPENSERS; REMOVING THE REQUIREMENT THAT AN INTERNSHIP REQUIREMENT FOR MORTICIANS BE FULFILLED WITHIN THE STATE OF MONTANA; REMOVING A DATE REQUIREMENT FOR MORTICIAN EXAMINATIONS; MAKING THE ADOPTION OF CERTAIN RULES PERTAINING TO MIDWIFERY DISCRETIONARY; ALLOWING MIDWIFERY EXAMINATIONS TO BE PREPARED BY A NATIONAL TESTING ENTITY; MODIFYING OUTDATED LANGUAGE PERTAINING TO DENTURISTS; AMENDING SECTIONS 2-15-1733, 15-6-217, 37-3-102, 37-3-103, 37-3-203, 37-3-303, 37-3-304, 37-3-307, 37-3-313, 37-3-315, 37-3-345, 37-4-301, 37-4-311, 37-4-312, 37-4-402, 37-6-304, 37-12-102, 37-12-302, 37-12-304, 37-13-306, 37-16-403, 37-19-302, 37-19-303, 37-20-302, 37-20-303, 37-26-301, 37-27-105, 37-27-202, 37-29-304, 39-71-116, AND 50-5-105, MCA; REPEALING SECTIONS 37-5-101, 37-5-102, 37-5-301, 37-5-302, 37-5-305, 37-5-307, AND 37-5-312, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1733, MCA, is amended to read:

"2-15-1733. Board of pharmacy. (1) There is a board of pharmacy.

(2) The board consists of ~~five~~ six members appointed by the governor with the consent of the senate. Three members must be licensed pharmacists, *one member must be a registered pharmacy technician*, and two members must be from the general public.

(a) Each licensed *pharmacist* member must have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana-Missoula or from an accredited pharmacy degree program that has been approved by the board. Each licensed *pharmacist* member must have at least 5 consecutive years of practical experience as a pharmacist immediately before appointment to the board. A licensed *pharmacist* member who, during the member's term of office, ceases to be actively engaged in the practice of pharmacy in this state must be automatically disqualified from membership on the board.

(b) *A registered pharmacy technician member must have at least 5 consecutive years of practical experience as a pharmacy technician immediately before appointment to the board. A registered pharmacy technician member who, during the member's term of office, ceases to be actively engaged as a pharmacy technician in this state must be automatically disqualified from membership on the board.*

~~(b)~~(c) Each public member of the board must be a resident of the state and may not be or ever have been:

(i) a member of the profession of pharmacy or the spouse of a member of the profession of pharmacy;

(ii) a person having any material financial interest in the providing of pharmacy services; or

(iii) a person who has engaged in any activity directly related to the practice of pharmacy.

(3) Members shall serve staggered 5-year terms. A member may not serve more than two consecutive full terms. For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.

(4) A member must be removed from office by the governor:

(a) upon proof of malfeasance or misfeasance in office, after reasonable notice of charges against the member and after a hearing; or

(b) upon refusal or inability to perform the duties of a board member in an efficient, responsible, and professional manner.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 15-6-217, MCA, is amended to read:

"15-6-217. Exemption for vehicle of certain health care professionals. A motor vehicle that is brought, driven, or coming into this state is exempt from the registration fees imposed in 15-24-301 if the motor vehicle is registered in another state or country by a nonresident person who is a licensed health care professional, as provided in Title 37, chapter 3, 5, 8, 11, 14, 20, 21, 25, 28, or 34, and who is employed in Montana by a rural health care facility that is located in an area that has been:

(1) designated by the secretary of the federal department of health and human services as a health professional shortage area, as provided in 42 U.S.C. 254(e); or

(2) determined to have a critical shortage of nurses, as provided in 42 U.S.C. 297n(a)(3)."

Section 3. Section 37-3-102, MCA, is amended to read:

"37-3-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Approved internship" means an internship training program of at least 1 year in a hospital that is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board may, upon investigation, approve any other internship.

(2) "Approved medical school" means a school that either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) "Approved residency" means a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board may upon investigation approve any other residency.

(4) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

(5) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.

~~(6)~~(7) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter."

Section 4. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

- (a) the gratuitous rendering of services in cases of emergency or catastrophe;
- (b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.
- (c) the practice of dentistry under the conditions and limitations defined by the laws of this state;
- (d) the practice of podiatry under the conditions and limitations defined by the laws of this state;
- (e) the practice of optometry under the conditions and limitations defined by the laws of this state;
- ~~(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;~~
- ~~(g)~~(f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;
- ~~(h)~~(g) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;
- ~~(i)~~(h) the performance by commissioned medical officers of the United States public health service or of the United States department of veterans affairs of their lawful duties in this state as officers;
- ~~(j)~~(i) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;
- ~~(k)~~(j) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.
- ~~(l)~~(k) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;
- ~~(m)~~(l) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

~~(m)~~ the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

~~(n)~~ the execution of a death sentence pursuant to 46-19-103;

~~(o)~~ the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

~~(p)~~ the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D.", "D.O.", or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 5. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate ~~licensed physicians~~ licensees subject to the jurisdiction of the board who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;

(5) select an executive secretary to be hired by the department to:

(a) provide services to the board in connection with the board's duties under this chapter;

(b) assist in prosecution and matters of license discipline under this chapter; and

(c) administer the board's affairs; and

(6) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary."

Section 6. Section 37-3-303, MCA, is amended to read:

"37-3-303. Practice authorized by physician's certificate. ~~The~~ A physician's certificate authorizes the holder to perform one or more of the acts embraced in 37-3-102~~(6)~~(7) in a manner reasonably consistent with ~~his~~ the holder's training, skill, and experience."

Section 7. Section 37-3-304, MCA, is amended to read:

“37-3-304. Practice authorized by temporary certificate. (1) ~~The A~~ temporary certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician’s certificate ~~and which may be issued for a period not to exceed 1 year, subject to renewal for additional periods of 1 year but not to exceed five such renewals, at the discretion of the board,~~ authorizes the holder to perform one or more of the acts embraced in 37-3-102 ~~(6)~~(7) in a manner reasonably consistent with ~~his~~ *the holder’s* training, skill, and experience, subject, ~~nevertheless,~~ to all specifications, conditions, and limitations imposed by the board.

(2) *A temporary certificate may not be issued for a period that exceeds 1 year. However, the certificate may be renewed, at the board’s discretion, for additional 1-year periods but may not be renewed more than five times.”*

Section 8. Section 37-3-307, MCA, is amended to read:

“37-3-307. Qualifications for licensure — temporary certificate. (1) The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, *by the national board of osteopathic medical examiners or successors,* or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or its equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) ~~A temporary license certificate~~ may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary ~~license certificate~~ subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary ~~license certificate~~ to a person ~~if he~~ *who* has committed unprofessional conduct. The issuance of a temporary certificate ~~imposes no~~ *does not impose any* future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary ~~license certificate~~. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant.”

Section 9. Section 37-3-313, MCA, is amended to read:

“37-3-313. Registration Renewal fees — failure to pay — limiting authority to impose registration renewal fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay to the department a registration renewal fee as prescribed by the board.

(2) The payments for registration renewal must be made prior to the expiration date of the registration license, as set forth in a department rule, and a receipt acknowledging payment of the registration fee must be issued by the department. The department shall mail registration renewal notices at least 60 days before the registration renewal is due.

(3) In case of default in the payment of the registration renewal fee by a person licensed to practice medicine who is actively practicing medicine in this state, the underlying certificate license to practice medicine may be revoked considered lapsed by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last known address of the person failing to comply with the requirements of registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke the underlying certificate. A certificate may not be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law.

(4) A registration or license or renewal fee may not be imposed on a licensee under this chapter by a municipality or any other subdivision of the state.”

Section 10. Section 37-3-315, MCA, is amended to read:

“37-3-315. Qualifications for licensure — restricted certificate — suspension — practice authorized. (1) A person may not be granted a restricted license to practice medicine in this state unless the person:

- (a) is of good moral character, as determined by the board;
- (b) is a graduate of an approved medical school or college of osteopathic medicine;
- (c) is licensed and engaged in the active practice of medicine or osteopathic medicine in another state or foreign country, whose licensing standards are acceptable to the board;
- (d) has never been subject to license discipline in any form;
- (e) demonstrates evidence of research and publication:
 - (i) in a peer-reviewed medical journal in the English language;
 - (ii) in the 2 years preceding receipt of the application; and
 - (iii) that demonstrate the applicant's competency in the field of medicine in which the restricted license is requested;
- (f) has been accepted for privileges in a hospital pending licensure by the board;
- (g) has demonstrated to the satisfaction of the board the applicant's knowledge, skills, and abilities by providing evidence of at least one of the following criteria:

(i) at least 3 years' postgraduate clinical training in a formal education program;

(ii) board certification in a specialty recognized or certified by the American board of medical specialties; ~~or~~

(iii) *board certification in a specialty recognized or certified by the American osteopathic association; or*

~~(iii)~~ (iv) passing, in the 75th percentile or higher, a board-approved state or national examination in medicine, such as the United States medical licensing examination, *the comprehensive osteopathic medical licensing examination*, the special purpose examination, *the comprehensive osteopathic medical variable-purpose examination*, an examination given by the educational commission for foreign medical graduates, or the licensing examination of another state or territory of the United States or Canada;

(h) has submitted a completed application file, which has been reviewed by the board, and has made a personal appearance before the board; and

(i) is able to communicate, in the opinion of the board, in the English language. Passing an examination given by the educational commission for foreign medical graduates or the test of English as a foreign language constitutes prima facie evidence of ability to communicate in the English language.

(2) The restricted license is suspended and subject to revocation after a hearing pursuant to the Montana Administrative Procedure Act upon one of the following:

(a) restriction, termination, or other cessation of the licensee's hospital privileges; or

(b) proof of one of the conditions or offenses identified in 37-3-323.

(3) The holder of a restricted license is limited to the practice of medicine specifically approved by the board after consideration of the applicant's training, skill, and experience. All restrictions, specifications, conditions, and limitations imposed by the board must be stated on the restricted certificate."

Section 11. Section 37-3-345, MCA, is amended to read:

"37-3-345. Qualifications for telemedicine certificate — basis for denial. The board may not grant a telemedicine certificate to a physician unless the physician has established under oath that the physician:

(1) has a full, active, unrestricted certificate *or license* to practice medicine *or osteopathic medicine* in another state or territory of the United States or the District of Columbia;

(2) is board-certified or meets the current requirements to take the examination to become board-certified in a medical specialty pursuant to the standards of, and approved by, the American board of medical specialties or the American osteopathic association bureau of osteopathic specialists;

(3) has no history of disciplinary action or limitation of any kind imposed by a state or federal agency in a jurisdiction where the physician is or has ever been licensed to practice medicine;

(4) is not the subject of a pending investigation by a state medical board or another state or federal agency;

(5) has no history of conviction of a crime related to the physician's practice of medicine;

(6) has submitted proof of current malpractice or professional negligence insurance coverage in the amount to be set by the rules of the board;

(7) has not paid, or had paid on the physician's behalf, on more than three claims of professional malpractice or negligence within the 5 years preceding the physician's application for a telemedicine certificate;

(8) has identified an agent for service of process in Montana who is registered with the secretary of state and the board and who may be a physician certified to practice medicine in this state;

(9) has paid an application fee in an amount set by the rules of the board; and

(10) has submitted as a part of the application form a sworn statement attesting that the physician has read, understands, and agrees to abide by Title 37, chapters 1 and 3, and the administrative rules governing the practice of medicine in Montana."

Section 12. Section 37-4-301, MCA, is amended to read:

"37-4-301. Examination — qualifications — fees — certification. (1) Applicants for licensure shall take and pass an examination in order to be licensed. The examination ~~shall~~ *must* consist of a written part and a practical or clinical part. It may also include, at the board's discretion, an oral interview with the board, which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence to be administered at times and places approved by the board. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) Acceptance by the board of ~~such~~ a written and practical examination ~~shall~~ *must* be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. ~~It shall~~ *The examination must* include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics, periodontics and endodontics, and any additional subjects pertaining to dental service.

(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing ~~any such~~ examination procedures.

(4) Applicants for licensure shall submit an application, which ~~shall~~ *must* include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) three affidavits of good moral character;

(d) certificate of graduation from a board-approved dental school;

- (e) an examination fee commensurate with costs and set by the board;
 - (f) ~~a licensure~~ *an application* fee commensurate with costs and set by the board;
 - (g) a recent photograph of the applicant; and
 - (h) copies of all other state licenses that are held by the applicant.
- ~~(5) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.~~
- ~~(6)~~(5) Applicants may not take the jurisprudence examination or the oral interview without first having completed and passed all other parts of the examination.
- ~~(7)~~(6) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass ~~his~~ *the* first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.
- ~~(8)~~(7) The board is authorized to adopt necessary and reasonable rules governing application procedures.”

Section 13. Section 37-4-311, MCA, is amended to read:

“37-4-311. Rehabilitation. The board shall establish a protocol for the referral to a board-approved rehabilitation program for ~~licensed dentists~~ *licensees subject to the jurisdiction of the board* who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.”

Section 14. Section 37-4-312, MCA, is amended to read:

“37-4-312. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each ~~licensed dentist~~ *licensee*, professional standards review organization, the Montana dental association or any component society of the association, and any other person may report to the board any information that the ~~dentist~~ *licensee*, organization, association, society, or person has that appears to show that a ~~dentist~~ *licensee* is physically or mentally impaired by habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program endorsed by the board under 37-4-311 in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that ~~they~~ *the program personnel* recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare; or

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law."

Section 15. Section 37-4-402, MCA, is amended to read:

"37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided by rules adopted under 37-1-319, a person may not engage in the practice of dental hygiene or practice as a dental hygienist in this state until the person has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination ~~shall~~ *must* consist of a written part and a practical or clinical part. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing examination procedures.

(5) Applicants for licensure shall submit an application, which must include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) certificate of graduation from a board-approved dental hygiene school;

(e) an examination fee commensurate with costs and set by the board;

(f) ~~a licensure~~ *an application* fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

(6) ~~Applications must be submitted no less than 20 days prior to the jurisprudence examination.~~ Applicants may not take the jurisprudence examination without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass the first examination, if otherwise qualified,

may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures."

Section 16. Section 37-6-304, MCA, is amended to read:

"37-6-304. Designations on license — recording — renewal — display. (1) A license issued under this chapter is designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

(2) Licenses must be recorded by the department the same as other medical licenses.

(3) Licenses must be renewed on a date set by department rule.

(4) A license renewal fee set by the board must be paid on a date set by department rule.

(5) The department shall mail renewal notices ~~no later than 60 days~~ prior to the renewal date.

(6) If the renewal fee is not paid on or before the renewal date, the board may ~~revoke the licensee's certificate after giving 30 days' notice to the licensee consider the license lapsed. A certified letter addressed to the delinquent licensee's last known address as it appears on the records of the department constitutes notice of intent to revoke the certificate. A certificate may not be revoked for nonpayment of a renewal fee if the licensee pays the renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.~~

~~(7) A license revoked for nonpayment of the renewal fee may be reissued only on original application and payment of an additional fee prescribed by the board.~~

~~(8) Licenses must be conspicuously displayed by podiatrists at their offices or other places of practice."~~

Section 17. Section 37-12-102, MCA, is amended to read:

"37-12-102. Exemptions — limitations on construction of chapter. ~~Nothing in this~~ This chapter shall ~~may not~~ be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of ~~his profession those professions~~. The practice of chiropractic as ~~herein defined in this chapter is hereby~~ declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining ~~the same medicine and surgery~~ and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining ~~the same osteopathy~~. ~~Duly licensed Licensed chiropractors shall~~ are not be subject to the provisions of ~~chapter 5 of this title pertaining to the practice of osteopathy or liable to any prosecution thereunder under those provisions."~~

Section 18. Section 37-12-302, MCA, is amended to read:

"37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall make application to the department, on the form and in the manner prescribed by the board, ~~at least 21 days prior to a meeting of the board~~. Each applicant must be a graduate of or expect to graduate within 90 days prior to the next licensing examination administered by the board from a college of chiropractic approved by the board, in which the applicant has attended a course of study of 4 school years of not less than 9 months each. The applicant shall present evidence showing proof of a bachelor's degree from an accredited college or university. Application must be made in

writing, must be sworn to by an officer authorized to administer oaths, and must recite the history of applicant's educational qualifications, how long the applicant has studied chiropractic, of what school or college the applicant is a graduate, and the length of time the applicant has been engaged in practice. The application must be accompanied with copies of diplomas and certificates and satisfactory evidence of good character and reputation.

(2) The applicant shall pay to the department a license fee prescribed by the board. A fee must also be paid for a subsequent examination and application.

(3) A person who is licensed in another state or who previously graduated from or was enrolled in a chiropractic college accredited by the council on chiropractic education on or before October 1, 1995, is exempt from the bachelor's degree requirement."

Section 19. Section 37-12-304, MCA, is amended to read:

"37-12-304. Examinations — subjects. (1) ~~Examinations for a license to practice chiropractic must be made by the department, subject to 37-1-101, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application must be designated by a number instead of the applicant's name so that the identity will not be discovered or disclosed until after the examination papers are graded. Applicants for a license to practice chiropractic must have passed an examination prescribed by the board.~~

~~(2) Examinations must be administered on subjects taught in chiropractic colleges, on the provisions of this chapter, and on other provisions of the Montana Code Annotated pertaining to the practice of chiropractic. A license must be granted to applicants who correctly answer 75% of all questions asked, including x ray questions. If an applicant fails to answer correctly 60% of the questions on any branch of the examination, the applicant is not entitled to a license.~~

~~(3)~~(2) The board may accept the grades an applicant has received in the examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter. The board may require an applicant to satisfactorily pass a clinical proficiency examination before being issued a license, even though the applicant holds a valid certificate from the national board of chiropractic examiners."

Section 20. Section 37-13-306, MCA, is amended to read:

"37-13-306. Renewal — fee — military exemption. (1) The license to practice acupuncture must be renewed on a date set by the department, without examination and upon request of the licensee. The request for renewal must be on forms prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee must be ~~in the hands of the secretary of the board~~ received at the board's office not later than the expiration date of the license.

~~(2) Immediately following the renewal date, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be canceled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee~~

prescribed by the board, is in the hands of the secretary within 30 days of the renewal date.

~~(3) If the licensee fails to renew within 30 days following the renewal date, the secretary of the board shall cancel and revoke upon the board's records all licenses that have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are revoked of the action.~~

~~(4) A licensee who allows the license to lapse by failing to renew or reinstate the license as provided in this section may subsequently reinstate the license upon good cause shown to the satisfaction of the board and upon payment of all renewal fees then accrued plus an additional fee prescribed by the board for each renewal period following the cancelling of the license.~~

~~(5) A person actively engaged in the military service of the United States and licensed to practice acupuncture as provided in this part is not required to pay the renewal fee or make application for renewal until the renewal date of the calendar period in which the person returns from military service to civilian or inactive status."~~

Section 21. Section 37-16-403, MCA, is amended to read:

~~"37-16-403. Examinations — time and place — number of failures allowed.~~ (1) An applicant for a license who is notified by the department that the applicant has fulfilled the requirements of 37-16-402 shall appear at a time and place designated by the board to take written and practical examinations in order to demonstrate that the applicant is qualified to practice the fitting of hearing aids and related devices.

~~(2) An applicant who fails two successive practical examinations is eligible for reexamination after 2 years have elapsed since the date of the applicant's last examination and after the applicant has completed additional training or education recognized by the board."~~

Section 22. Section 37-19-302, MCA, is amended to read:

~~"37-19-302. License required for practice of mortuary science — qualifications of applicants.~~ (1) The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the board is prohibited. A person 18 years of age or older wishing to practice mortuary science in this state must apply to the board on the form and in the manner prescribed by the board.

(2) To qualify for a mortician's license, a person must:

- (a) be of good moral character;
- (b) present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study at an accredited college or university;
- (c) in addition to the 90 quarter credits or the equivalent of study required in subsection (2)(b), have graduated with a diploma from an accredited college of mortuary science;

(d) pass an examination prescribed by the board; and

(e) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary ~~in Montana~~ after passing the examination provided for in subsection (2)(d).

(3) A person who fails the examination required in subsection (2)(d) may retake it under conditions prescribed by rule of the board."

Section 23. Section 37-19-303, MCA, is amended to read:

“37-19-303. Mortician’s license — application fee. A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board, may take the examination prescribed by the board. ~~The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary.”~~

Section 24. Section 37-20-302, MCA, is amended to read:

“37-20-302. Utilization plan approval fee — renewal of license — renewal fee. (1) A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A license issued under this part must be renewed for a period and on a date set by the department of *labor and industry*.

(4) A license renewal fee set by the board must be paid at the time the license is renewed.

(5) ~~The department of labor and industry shall mail a renewal notice no later than 60 days prior to the renewal date. A certified letter addressed to the delinquent licensee’s last known address as it appears on the records of the department constitutes notice of intent to revoke the license.~~

(6) ~~If the license renewal fee is not paid on or before the renewal date, the board may revoke consider the license after giving 30 days’ notice to the licensee lapsed. A license may not be revoked for nonpayment of a renewal fee if the licensee pays the renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.~~

(7) Fees received by the department of *labor and industry* must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6).”

Section 25. Section 37-20-303, MCA, is amended to read:

“37-20-303. Exemptions from approval requirement. This chapter does not require the approval of a physician assistant-certified utilization plan or locum tenens utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapters 3, 4, 6 through 17, 31, or 32.”

Section 26. Section 37-26-301, MCA, is amended to read:

“37-26-301. Practice of naturopathic health care — alternative health care formulary committee. (1) Naturopathic physicians may practice naturopathic medicine as a limited practice of the healing arts as exempted in 37-3-103(1) ~~(m)~~(m), with the following restrictions. A naturopathic physician may not:

(a) prescribe, dispense, or administer any legend drug, as defined in 50-31-301, except for whole gland thyroid; homeopathic preparations; the natural therapeutic substances, drugs, and therapies described in subsection (2); and oxytocin (pitocin), provided that the naturopathic physician may administer but may not prescribe or dispense oxytocin (pitocin);

(b) administer ionizing radioactive substances for therapeutic purposes;

(c) perform surgical procedures except those minor surgery procedures authorized by this chapter; or

(d) claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession.

(2) Naturopathic physicians may prescribe and administer for preventive and therapeutic purposes the following natural therapeutic substances, drugs, and therapies, as well as drugs on the natural substance formulary list provided for in subsection (3):

(a) food, food extracts, vitamins, minerals, enzymes, whole gland thyroid, botanical medicines, homeopathic preparations, and oxytocin (pitocin);

(b) topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, therapeutic devices, and nonprescription drugs; and

(c) barrier devices for contraception, naturopathic childbirth attendance, and minor surgery.

(3) A five-member alternative health care formulary committee appointed by the board shall establish a natural substance formulary list. The committee consists of a licensed pharmacist plus four members of the board, two of whom must be licensed naturopathic physicians, one who must be a licensed medical doctor, and one who must be a public member. The list may not go beyond the scope of substances covered by approved naturopathic college curricula or continuing education and must be reviewed annually by the committee. Changes to the list that are recommended by the committee and accepted by the board must be published as administrative rules.

(4) Naturopathic physicians may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by 37-26-201(2).

(5) Except as provided by this subsection, it is unlawful for a naturopath to engage, directly or indirectly, in the dispensing of any drugs that a naturopath is authorized to prescribe by subsection (2). If the place where a naturopath maintains an office for the practice of naturopathy is more than 10 miles from a place of business that sells and dispenses the drugs a naturopath may prescribe under subsection (2), then, to the extent the drugs are not available within 10 miles of the naturopath's office, the naturopath may sell the drugs that are unavailable."

Section 27. Section 37-27-105, MCA, is amended to read:

"37-27-105. General powers and duties of board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board shall have the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules ~~must~~ may include but are not limited to:

(a) the development of a license application and examination, criteria for and grading of examinations, and establishment of examination and license fees commensurate with actual costs;

(b) the issuance of a provisional license to midwives who filed the affidavit required by section 2, Chapter 493, Laws of 1989;

(c) the establishment of criteria for minimum educational, apprenticeship, and clinical requirements that, at a minimum, meet the standards established in 37-27-201;

(d) the development of eligibility criteria for client screening by direct-entry midwives in order to achieve the goal of providing midwifery services to women during low-risk pregnancies;

(e) the development of procedures for the issuance, renewal, suspension, and revocation of licenses;

(f) the adoption of disciplinary standards for licensees;

(g) the development of standardized informed consent and reporting forms;

(h) the adoption of ethical standards for licensed direct-entry midwives;

(i) the adoption of supporting documentation requirements for primary birth attendants; and

(j) the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards established in 37-27-201."

Section 28. Section 37-27-202, MCA, is amended to read:

"37-27-202. Examination — preparation — requirements. (1) An examination for a license to practice direct-entry midwifery must be prepared by a ~~certified nurse midwife designated by the board in consultation with the physician or~~ national testing agency approved by the board.

(2) Examinations must be conducted once each year, be fair and impartial, and be sufficiently comprehensive to adequately test the applicant's competence and ability.

(3) In order to be licensed, a person ~~shall~~ must attain a passing grade on the examination, as set by the board.

(4) A person who fails to achieve a passing grade on the examination may not engage in the practice of midwifery."

Section 29. Section 37-29-304, MCA, is amended to read:

"37-29-304. Applications and fees Fees. (1) ~~The board is initially entitled to charge and collect the following fees:~~

~~(a) \$200 application for licensing;~~

~~(b) \$200 for original license;~~

~~(c) \$200 license renewal fee;~~

~~(d) \$200 for examination or reexamination, provided that if on reexamination only the written examination is required, the fee is \$100; and~~

~~(e) \$50 for a duplicate or replacement license or a license for a second address, provided that a dentist may not hold licenses bearing more than two different addresses.~~

~~(2) The board may shall set other fees and modify the initial fees commensurate with costs in accordance with the provisions of 37-1-134.~~

Section 30. Section 39-71-116, MCA, is amended to read:

“39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) “Actual wage loss” means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) “Administer and pay” includes all actions by the state fund under the Workers’ Compensation Act and the Occupational Disease Act of Montana necessary to:

- (a) investigation, review, and settlement of claims;
- (b) payment of benefits;
- (c) setting of reserves;
- (d) furnishing of services and facilities; and
- (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) “Aid or sustenance” means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) “Average weekly wage” means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) “Beneficiary” means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

(6) “Business partner” means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) “Casual employment” means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) “Child” includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(9) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major group 23 in the North American Industry Classification System Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(15) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" is as defined in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(22) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(23) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(24) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(25) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

(26) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(27) "Public corporation" means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(28) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(29) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(30) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (30), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(33) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(34) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(35) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(36) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (36)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (36)(a) through (36)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided for in subsection (36)(a), in the area in which the advanced practice registered nurse is located.

(37) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(38) "Year", unless otherwise specified, means calendar year."

Section 31. Section 50-5-105, MCA, is amended to read:

"50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 5 or 6.

(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria."

Section 32. Repealer. Sections 37-5-101, 37-5-102, 37-5-301, 37-5-302, 37-5-305, 37-5-307, and 37-5-312, MCA, are repealed.

Section 33. Coordination instruction. If House Bill No. 285 and [this act] are both passed and approved, then [section 20 of this act] is amended to read:

"Section 20. Section 37-13-306, MCA, is amended to read:

"37-13-306. Renewal — fee — military exemption. (1) ~~The~~ *Except as provided in [section 2 of House Bill No. 285], the license to practice acupuncture must be renewed on a date set by the department, without examination and upon request of the licensee. The request for renewal must be on forms a form prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee must be in the hands of the secretary of the board received at the board's office not later than the expiration date of the license.*

~~(2) Immediately following the renewal date, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be canceled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee prescribed by the board, is in the hands of the secretary within 30 days of the renewal date.~~

~~(3) If the licensee fails to renew within 30 days following the renewal date, the secretary of the board shall cancel and revoke upon the board's records all licenses that have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are revoked of the action.~~

~~(4) A licensee who allows the license to lapse by failing to renew or reinstate the license as provided in this section may subsequently reinstate the license upon good cause shown to the satisfaction of the board and upon payment of all renewal fees then accrued plus an additional fee prescribed by the board for each renewal period following the cancelling of the license.~~

~~(5) A person actively engaged in the military service of the United States and licensed to practice acupuncture as provided in this part is not required to pay the renewal fee or make application for renewal until the renewal date of the calendar period in which the person returns from military service to civilian or inactive status.”~~

Section 34. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 35. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 36. Effective date. [This act] is effective July 1, 2003.

Approved April 3, 2003

CHAPTER NO. 225

[SB 121]

AN ACT GENERALLY REVISING THE TAXATION OF PASS-THROUGH ENTITIES AND THEIR OWNERS; TO CLARIFY THAT ALL OWNERS OF PASS-THROUGH ENTITIES WITH MONTANA SOURCE INCOME ARE SUBJECT TO TAX; TO EXTEND THE CONSENT, COMPOSITE RETURN, AND WITHHOLDING PROVISIONS TO FOREIGN C. CORPORATIONS AND TO OTHER PASS-THROUGH ENTITY OWNERS; TO PROVIDE A REFUNDABLE CREDIT FOR SECOND-TIER PASS-THROUGH ENTITY OWNERS FOR WITHHELD AMOUNTS REMITTED ON THEIR BEHALF; TO CLARIFY AN INTENT THAT THE PASS-THROUGH ENTITY PROVISIONS NOT OVERRIDE THE MULTISTATE TAX COMPACT; PROVIDING A DEFINITION OF “FOREIGN C. CORPORATION”; AND AMENDING SECTIONS 15-30-101, 15-30-1102, 15-30-1112, AND 15-30-1113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-101, MCA, is amended to read:

“15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) “Base year structure” means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) “Consumer price index” means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity:

(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "*Foreign C. corporation*" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

~~(8)~~(9) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

~~(9)~~(10) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.

~~(10)~~(11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 1980.

~~(11)~~(12) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

~~(12)~~(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific

provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

~~(13)~~ (14) "Knowingly" is as defined in 45-2-101.

~~(14)~~ (15) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

~~(15)~~ (16) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

~~(16)~~ (17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

~~(17)~~ (18) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

~~(18)~~ (19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

~~(19)~~ (20) "Nonresident" means a natural person who is not a resident.

~~(20)~~ (21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(21)~~ (22) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

~~(22)~~ (23) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

~~(23)~~ (24) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

~~(24)~~ (25) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

~~(25)~~ (26) "Purposely" is as defined in 45-2-101.

~~(26)~~ (27) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(27)~~ (28) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

~~(28)~~ (29) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

~~(29)~~ (30) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(30)~~ (31) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(31)~~ (32) "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

~~(32)~~ (33) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."

Section 2. Section 15-30-1102, MCA, is amended to read:

“15-30-1102. Income or license tax involving pass-through entities — information returns required. (1) Except as otherwise provided:

- (a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;
- (b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and
- (c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, ~~manager~~, member, or other owner of an entity described in subsection (1)(c), *the first-tier pass-through entity*, is subject to the taxes provided in this chapter, if an individual, *trust, or estate*, and to the taxes provided in Title 15, chapter 31, if a C. corporation. *If a partner, shareholder, member, or other owner of an entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.*

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) (a) A partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

- (i) the name, address, and social security or federal identification number of each partner;
- (ii) the partnership's Montana source income;
- (iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;
- (iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and
- (v) any other information the department prescribes.

(b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

- (i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each ~~manager~~, member; or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (4)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of \$10 multiplied by the number of the entity's partners, shareholders, ~~managers~~, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection (4)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (4)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, ~~managers~~, members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

Section 3. Section 15-30-1112, MCA, is amended to read:

"15-30-1112. Composite returns and tax. (1) A partnership or S. corporation may elect to file a composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, ~~manager, or~~ member, *or other owner* who:

(a) is a nonresident individual, *a foreign C. corporation, or a pass-through entity* whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, ~~manager, or~~ member, *or other owner*; and

(b) consents to be included in the filing.

(2) (a) Each participant's composite tax liability is the product obtained by:

(i) determining the tax that would be imposed, using the rates specified in 15-30-103, on the sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(b) A participant's share of the entity's income is the aggregate of the participant's share of the entity's income, gain, loss, or deduction or item of income, gain, loss, or deduction.

(3) The composite tax is the sum of each participant's composite tax liability.

(4) The electing entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments as prescribed by 15-30-241 computed separately for each participant included in the filing of a composite return; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the entity information return. The composite return is in lieu of an individual income tax return required under 15-30-142 and 15-30-144, a corporation license tax return required under 15-31-111, and a corporation income tax return required under 15-31-403.

(6) The composite tax is in lieu of the ~~tax~~ taxes imposed under:

(a) 15-30-103 and 15-30-105;

(b) 15-31-101 and 15-31-121; and

(c) 15-31-403.

(7) The department may adopt rules that are necessary to implement and administer this section."

Section 4. Section 15-30-1113, MCA, is amended to read:

"15-30-1113. Consent or withholding. (1) A pass-through entity that is required to file an information return as provided in 15-30-1102 and that has a partner, shareholder, ~~manager~~, member, or other owner who is a nonresident individual, a foreign C. corporation, or a pass-through entity that itself has any partner, shareholder, member, or other owner that is a nonresident individual, foreign C. corporation, or pass-through entity shall, on or before the due date, including extensions, for the information return:

(a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual:

(i) file a composite return ~~with respect to the individual nonresident;~~

~~(b)~~ (ii) file an agreement of the individual nonresident to:

~~(A)~~ (A) file a return in accordance with the provisions of 15-30-142;

~~(ii)~~(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

~~(iii)~~(C) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

~~(e)~~(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return;

(b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:

(i) file a composite return;

(ii) file the foreign C. corporation's agreement to:

(A) file a return in accordance with the provisions of 15-31-111;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of corporation license and income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C. corporation's share of Montana source income reflected on the pass-through entity's information return; and

(c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also referred to in this section as a "second-tier pass-through entity":

(i) file a composite return;

(ii) file a statement of the pass-through entity partner, shareholder, or other owner setting forth the name, address, and social security or federal identification number of each of that entity's partners, shareholders, members, or other owners and information that establishes that its share of Montana source income will be fully accounted in individual income or corporation license or income tax returns filed with the state; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by its share of Montana source income reflected on the pass-through entity's information return.

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection ~~(1)(e)~~ (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the nonresident individual a record of the amount of tax paid on the individual's behalf.

(3) Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the corporation license tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the corporation income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403. On or before the due date, including extensions, of the

pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid on its behalf.

(4) *Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant to subsection (1)(c)(iii) must be considered as payment on the account of the individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and must be claimed as the distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner on behalf of which the amount was paid. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the second-tier pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.*

(5) *A pass-through entity is entitled to recover a payment made pursuant to ~~subsection (1)(e)~~ subsection (1)(a)(iii), (1)(b)(iii), or (1)(c)(iii) from the partner, shareholder, ~~manager,~~ member, or other owner on whose behalf the payment was made.*

(6) *Following the department's notice to a pass-through entity that a nonresident individual or foreign C. corporation did not file a return or timely pay all taxes as provided in subsection (1), the pass-through entity must, with respect to any tax year thereafter for which the nonresident individual or foreign C. corporation is not included in the pass-through entity's composite return, remit the amount described in subsection (1)(a)(iii) for the nonresident individual and the amount described in subsection (1)(b)(iii) for the foreign C. corporation.*

(7) *Nothing in this section may be construed as modifying the provisions of Article IV, section 18, of 15-1-601 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the extent of the taxpayer's business activity in the state."*

Ap proved April 3, 2003

CHAPTER NO. 226

[SB 216]

AN ACT PROVIDING THAT A FORMER MEMBER OF THE SELF-INSURERS GUARANTY FUND IS LIABLE FOR ASSESSMENTS MADE BY THE FUND IN ANY YEAR FOLLOWING THE DATE THAT THE MEMBER'S STATUS AS A PRIVATE SELF-INSURER IS TERMINATED; REQUIRING A FORMER MEMBER'S ASSESSMENT TO BE BASED ON BENEFITS PAID DURING THE LAST CALENDAR YEAR IMMEDIATELY PRECEDING THE ANNUAL ASSESSMENT; AMENDING SECTION 39-71-2615, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2615, MCA, is amended to read:

"39-71-2615. Initial fee — assessment. (1) A private self-insurer shall pay to the fund an initial fee of \$1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) (a) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of this part. However, the total annual assessments in any calendar year may not exceed 5% of the following benefits paid by each member during the preceding calendar year:

(i) compensation benefits; and

(ii) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, the total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(b) Funds obtained by assessment pursuant to this subsection may be used only for the purposes of this part.

(3) A former member is liable for assessments made by the fund ~~for 3 years in any year~~ following the date the member's status as a private self-insurer is terminated, whether the termination is by action of the private self-insurer or the department. A former member's assessment must be based on the benefits paid during the last calendar year immediately preceding the ~~termination of the member's status as a private self-insurer~~ annual assessment.

(4) The board shall certify to the department the collection and receipt of assessments, noting any delinquencies. The board shall take appropriate action to collect a delinquent assessment."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2003

CHAPTER NO. 227

[SB 221]

AN ACT ALLOWING THE TAKING OF SALMON AND LAKE TROUT BY SPEAR OR GIG IN FORT PECK RESERVOIR DURING CERTAIN TIMES; AND AMENDING SECTION 87-3-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-204, MCA, is amended to read:

"87-3-204. Restrictions on fishing methods. (1) ~~No~~ A game fish may *not* be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any ~~such~~ set gun, trap, or other device to entrap game fish be used, made, or set.

(2) ~~It is unlawful for a~~ A person ~~to~~ may *not*:

(a) take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand; ~~to~~

(b) take or catch fish with hook baited with any poisonous substance or by ~~means of the use of~~ using any poisonous substance, including fish berries; or ~~to~~

(c) take or catch fish by ~~means of the use of~~ using fishtraps, grabhooks, seines, nets, or other similar means for catching fish.

(3) The department may designate ~~such~~ waters within the state of Montana wherein, in the judgment of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish, and traps, seines, nets, and rubber or spring-propelled spears, when employed by

~~sportsmen~~ persons swimming or submerged in the water, may be used for the taking of designated species of fish. The waters so designated may be closed at the discretion of the department. The taking of all fish by ~~such~~ those means in the waters, when so designated, is to be done under ~~such~~ rules as that the department ~~may prescribe~~ prescribes with reference ~~thereto~~ to the waters and under the supervision of the department. All ~~such~~ nongame fish so taken may be possessed and sold in ~~such~~ a manner and under ~~such~~ restrictions as that the department may direct. All fish, other than those ~~herein~~ designated in this section, ~~so~~ taken under department rules, when prescribed by the department, ~~shall~~ must be returned uninjured to the waters from which they were taken.

(4) The taking of black bass in Flathead Lake may be permitted by the department.

(5) The department ~~shall have the power to~~ may designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the department may designate the number of hooks and lines and the length of line or lines ~~which~~ that may be used as setlines.

(6) Game fish ~~shall~~ must be taken only by angling; that is, by hook and single line in hand or single rod in hand or within immediate control. This does not prevent, however:

(a) the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the department declares an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow, under ~~such~~ rules and regulations as that the fish, wildlife, and parks commission ~~may prescribe~~ prescribes;

(c) the taking of walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig when the department declares an open season for taking walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig;

(d) the use of landing net or gaff to land a game fish after the ~~same~~ fish has been hooked by angling as ~~above~~ specified in subsection (6);

(e) the taking of minnows, other than game fish variety, by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in ~~such~~ waters as may be designated by the department;

(f) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under ~~such~~ rules and regulations as that the fish, wildlife, and parks commission ~~may prescribe~~ prescribes; ~~or~~

(g) the taking of any game fish through a hole in ice with an unattended line or rod as long as the angler is in the vicinity and within visual contact of the line or rod; or

(h) the taking of salmon and lake trout in Fort Peck reservoir by spear or gig from December through March, under rules and regulations prescribed by the commission."

Approved April 3, 2003

CHAPTER NO. 228

[SB 253]

AN ACT CREATING A CLASS B-5 10-DAY NONRESIDENT FISHING LICENSE; ESTABLISHING THE TERMS, USE, AND COST OF THE LICENSE; DIRECTING A PORTION OF THE LICENSE FEE TO THE PURCHASE, OPERATION, DEVELOPMENT, AND MAINTENANCE OF FISHING ACCESSES; AMENDING SECTIONS 87-1-605, 87-2-104, 87-2-306, 87-2-805, AND 87-3-236, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Class B-5—ten-day nonresident fishing license. Any person not a resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license, upon payment of the sum of \$43.50 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a 10-day nonresident fishing license that authorizes the holder to fish with hook and line, as prescribed by rules and regulations of the department, for 10 consecutive days as indicated on the license.

Section 2. Section 87-1-605, MCA, is amended to read:

“87-1-605. (Temporary) Fees used to purchase recreational facilities. (1) One dollar of the fee for a Class A resident fishing license, 10% of the fee for a Class A-8 resident temporary fishing license, \$1 of the fee for a Class B-4 nonresident fishing license, *\$3.50 of the fee for a Class B-5 nonresident fishing license*, and \$5 of the fee for a Class B nonresident fishing license must be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages.

(2) The amount of funds used for operation and maintenance must equal at least 50% of the money set aside each year under this section and must be expended as provided in subsection (3). The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses or stream, river, or lake frontages and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages but are in addition to those funds. The funds used for operation and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974.

(3) Operation and maintenance money set aside each year under this section must be expended based on the following priority:

- (a) weed management;
- (b) streambank restoration; and
- (c) general operation and maintenance. (Terminates July 1, 2003—sec. 1, Ch. 109, L. 1999.)

87-1-605. (Effective July 1, 2003) Fees used to purchase recreational facilities. (1) One dollar of the fee for a Class A resident fishing license, 10% of the fee for a Class A-8 resident temporary fishing license, \$1 of the fee for a Class B-4 nonresident fishing license, *\$3.50 of the fee for a Class B-5 nonresident fishing license*, and \$5 of the fee for a Class B nonresident fishing license must be used for the purchase, operation, development, and maintenance of fishing

accesses; stream, river, and lake frontages; and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages.

(2) The amount of funds used for operation, development, and maintenance may not exceed 25% of the money set aside each year under this section. The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses or stream, river, or lake frontages and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages but are in addition to those funds. The funds used for operation, development, and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974.”

Section 3. Section 87-2-104, MCA, is amended to read:

“87-2-104. Number of licenses allowed — fees. (1) It is unlawful for any person to apply for, purchase, or possess more than one license of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 or Class B-5 licenses or to licenses issued under subsection (3) for game management purposes. However, when more than one license is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses than are authorized.

(2) The department may prescribe rules and regulations for the issuance or sale of a replacement license in the event the original license is lost, stolen, or destroyed upon payment of a fee not to exceed \$5.

(3) When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, Class B-7, Class B-8, or special antelope license to an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.

(4) The fee for any resident or nonresident license of any class issued under subsection (3) must be set annually by the department and may not exceed the regular fee provided by law for that class or species.”

Section 4. Section 87-2-306, MCA, is amended to read:

“87-2-306. Paddlefish tags. (1) The department may issue paddlefish tags to persons listed in subsection (2) for a fee of \$5 for residents and \$15 for nonresidents. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department.

(2) The following persons may obtain paddlefish tags pursuant to this section:

(a) holders of valid Class A, Class B, ~~and~~ Class B-4, and Class B-5 fishing licenses;

(b) residents under 15 years of age with a valid wildlife conservation license; and

(c) residents 62 years of age or older with a valid wildlife conservation license.”

Section 5. Section 87-2-805, MCA, is amended to read:

“87-2-805. Persons under eighteen years of age — youth combination sports license. (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and

migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, ~~or B-4~~, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, under 15 years of age may purchase Class A-3 and A-5 licenses at a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license at a price that, rounded to the nearest dollar, is 46% of the fee paid for the Class AAA combination sports license by a resident who is 18 years of age or older and under 62 years of age.

(b) The youth combination sports license includes:

- (i) a conservation license;
- (ii) a fishing license;
- (iii) an upland game bird license;
- (iv) an elk license; and
- (v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license at a price that is 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license at 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(e) A person who lawfully purchases a youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

- (i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and
- (ii) a monetary fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license."

Section 6. Section 87-3-236, MCA, is amended to read:

"87-3-236. Warm water game fish surcharge and stamp — warm water game fish defined — accounts established — dedication of revenue to Fort Peck multispecies fish hatchery. (1) A person who is

required to be licensed in order to fish in Montana and who desires to fish for warm water game fish in waters listed pursuant to subsection (9) shall, upon purchase of a Class A, Class B, Class B-4, *Class B-5*, or Class A-8 fishing license, pay a warm water game fish surcharge of \$5. The surcharge is in addition to the license fee established for each class of license and entitles the holder to fish for warm water game fish as authorized by the department. Payment of the surcharge must be indicated by placement of a warm water game fish stamp on the fishing license.

(2) A warm water game fish stamp is valid for the license year in which it is purchased.

(3) Revenue from the warm water game fish surcharge must be placed in the account created in subsection (5) and may be used only for the purposes set out in subsection (7).

(4) As used in this section, "warm water game fish" includes but is not limited to all species of the genera *Stizostedion*, *Esox*, *Micropterus*, and *Lota* and includes largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*), walleye (*Stizostedion vitreum*), sauger (*Stizostedion canadense*), black crappie (*Pomoxis nigromaculatus*), white crappie (*Pomoxis annularis*), channel catfish (*Ictalurus punctatus*), yellow perch (*Perca flavescens*), northern pike (*Esox lucius*), and tiger muskellunge.

(5) There is an account into which must be deposited:

(a) all proceeds from the warm water game fish surcharge established in subsection (1); and

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the Fort Peck multispecies fish hatchery.

(6) The department shall administer the account within the state special revenue fund established in 17-2-102.

(7) Subject to the provisions of subsection (8), revenue collected under subsection (5) must be used by the department for the construction, operation, maintenance, and personnel costs of the Fort Peck multispecies fish hatchery established in 87-3-235, which may include a cost-share agreement with the federal government for construction of the Fort Peck multispecies fish hatchery, and beginning October 1, 2005, for the costs incurred in eradicating illegally introduced warm water species from Montana waters. No more than 15% of available revenue may be dedicated to eradication efforts.

(8) The department may not use any nonfederal funds for the hatchery authorized in 87-3-235 other than those in the account provided for in subsection (5). There is an account in the federal special revenue fund into which must be deposited all federal money received for purposes of the Fort Peck multispecies fish hatchery and from which the department may use funds for the hatchery authorized in 87-3-235.

(9) The department shall prepare a list of all waters into which fish from the Fort Peck multispecies fish hatchery will be planted. The waters designated in the list are the only waters for which a warm water game fish stamp is required."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 3, and the provisions of Title 87, chapter 2, part 3, apply to [section 1].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2003

CHAPTER NO. 229

[SB 398]

AN ACT CLARIFYING THAT FINGERPRINT AND OTHER CRIMINAL HISTORY RECORD INFORMATION RELATING TO APPLICANTS FOR ADMISSION TO THE STATE BAR MAY BE EXCHANGED WITH THE MONTANA SUPREME COURT AND ITS COMMISSION ON CHARACTER AND FITNESS FOR LICENSING PURPOSES; AMENDING SECTION 44-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-5-302, MCA, is amended to read:

“44-5-302. Dissemination of criminal history record information that is not public criminal justice information. (1) Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

(a) the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in 44-5-214 and 44-5-215;

(b) a district court considers dissemination necessary;

(c) the information is disseminated in compliance with 44-5-304; or

(d) the agency receiving the information is authorized by law to receive it.

(2) The department of justice and other criminal justice agencies may accept fingerprints of applicants for admission to the state bar of Montana and shall, with respect to a bar admission applicant whose fingerprints are given to the department or agency by the state bar, exchange available state, multistate, local, federal (to the extent allowed by federal law), and other criminal history record information with the ~~state bar~~ *Montana supreme court and its commission on character and fitness* for licensing purposes.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2003

CHAPTER NO. 230

[HB 557]

AN ACT GENERALLY REVISING PROVISIONS RELATING TO ANATOMICAL GIFTS; PROVIDING FOR THE DEVELOPMENT OF AN ORGAN DONATION REGISTRY SYSTEM; PROVIDING FOR THE TRANSFER OF ORGAN DONOR INFORMATION FROM THE DEPARTMENT OF JUSTICE TO THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION; LIMITING USES OF ORGAN DONOR INFORMATION; ALLOWING THE DEPARTMENT OF JUSTICE TO RECOVER COSTS; CLARIFYING THAT THE DONOR'S WISHES ARE PARAMOUNT; AND AMENDING SECTIONS 61-5-301 AND 72-17-201, MCA.

WHEREAS, more than 80,000 people are currently waiting for life-saving organ transplants on the national transplant waiting list, of which 1,200 persons live in our region, and 17 people die each day as a result of the shortage of donated organs.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings. (1) The legislature finds that the use of anatomical gifts, including the donation of organs or tissue, for the purpose of transplantation is of great interest to the citizens of Montana and may save or prolong the life or improve the health of extremely ill and dying persons. The creation of a statewide organ and tissue donation registry is crucial to facilitate timely and successful organ and tissue procurement.

(2) The legislature further finds that continuing education of the existence and maintenance of a statewide organ and tissue donation registry is in the best interest of the people of Montana.

Section 2. Statewide organ and tissue donation registry. (1) The department of justice shall electronically transfer to the federally designated organ procurement organization all information that appears on the front of a driver's license, including the name, gender, date of birth, and most recent address of any person who obtains a driver's license and who volunteers to donate organs or tissue upon death, as provided in 61-5-301. The department of justice may charge actual costs for the first transfer of information, as provided in subsection (5). However, all subsequent electronic transfers of donor information must be at no charge to the federally designated organ procurement organization.

(2) Information obtained by the federally designated organ procurement organization must be used for the purpose of establishing a statewide organ and tissue donation registry accessible to in-state, recognized cadaveric organ and cadaveric tissue agencies for the recovery or placement of organs and tissue and to procurement agencies in another state when a Montana resident is a donor of an anatomical gift and is not located in the state at the time of death or immediately before the death of the donor.

(3) An organ or tissue donation organization may not obtain information from the organ and tissue donation registry for the purpose of fundraising. Organ and tissue donation registry information may not be further disseminated unless authorized in this section or by federal law. Dissemination of organ and tissue donation registry information may be made by the organ procurement organization to a recognized, in-state procurement agency for other tissue recovery or to an out-of-state, federally designated organ procurement organization.

(4) The federally designated organ procurement organization may acquire donor information from sources other than the department of justice.

(5) All reasonable costs associated with the creation and maintenance of the organ and tissue donation registry, as determined by the department of justice, must be paid by the organ and tissue procurement organizations. Any money collected by the department of justice must be deposited in an account in the state special revenue fund established by the department of justice for the purpose of the payment of reasonable costs associated with the development and maintenance of the organ and tissue donation registry and necessary for the initial installation and setup for electronic transfer of the donor information.

(6) An individual does not need to participate in the organ and tissue donation registry to be a donor of organs or tissue. The registry is intended to facilitate organ and tissue donation and not inhibit persons from being donors upon death.

Section 3. Section 61-5-301, MCA, is amended to read:

“61-5-301. Indication on driver’s license of intent to make anatomical gift. (1) The department of justice shall provide on each driver’s license a space for indicating when the licensee has executed a document under 72-17-201 of intent to make a gift of all or part of ~~his~~ *the driver’s* body under the Uniform Anatomical Gift Act.

(2) The department shall provide each applicant, at the time of application for a new driver’s license or for a renewal, printed information calling the applicant’s attention to the provisions of this section. Each applicant must be asked orally ~~whether he~~ *if the applicant* wishes to make an anatomical gift.

(3) Each applicant must be given an opportunity to indicate in the space provided under subsection (1) ~~his~~ *the applicant’s* intent to make an anatomical gift.

(4) The department shall issue to ~~every~~ *each* applicant who indicates ~~such an~~ *an* intent *to make an anatomical gift* a statement ~~which that~~, when signed by the licensee in the manner prescribed in 72-17-201, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of ~~his~~ *the donor’s* driver’s license.

(5) ~~The department shall also furnish the licensee a means of revoking the document of gift upon the license. The department shall electronically transfer the information of all persons who volunteer, upon application for a driver’s license or an identification card, to donate organs or tissue to the organ and tissue donation registry created in [sections 1 and 2] and any subsequent changes to the applicant’s donor status.”~~

Section 4. Section 72-17-201, MCA, is amended to read:

“72-17-201. Making, amending, revoking, and refusing to make anatomical gifts by an individual. (1) An individual who is at least 18 years of age may:

- (a) make an anatomical gift for any of the purposes stated in 72-17-202; *or*
- (b) limit an anatomical gift to one or more of those purposes; ~~or~~
- ~~(c) refuse to make an anatomical gift.~~

(2) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and must state that it has been ~~so~~ signed.

(3) If a document of gift is attached to or imprinted on a donor’s motor vehicle operator’s license, the document of gift must comply with subsection (2). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the

anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon the death of the testator, whether or not the will is probated. If, after the testator's death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected. *A gift made in accordance with this section is sufficient legal authority for procurement without additional authority from the donor, donor's family, or estate.*

(6) (a) A donor may amend or revoke an anatomical gift not made by will only by:

~~(a)~~(i) a signed statement;

~~(b)~~(ii) an oral statement made in the presence of two individuals;

~~(c)~~(iii) any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

~~(d)~~(iv) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(b) *A donor shall notify the federally designated organ procurement organization of the destruction, cancellation, or mutilation of the document for the purpose of removing the person's name from the organ and tissue donation registry created in [sections 1 and 2].*

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6).

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death. *The donor's family or health care provider may not refuse to honor the gift or thwart the procurement of the donation.*

(9) (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(i) a writing signed in the same manner as a document of gift;

(ii) a statement attached to or imprinted on a donor's motor vehicle operator's license; or

(iii) any other writing used to identify the individual as refusing to make an anatomical gift.

(b) During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under 72-17-214 or on a removal or release of other parts under 72-17-215.

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9)."

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 72, chapter 17, and the provisions of Title 72, chapter 17, apply to [sections 1 and 2].

Approved April 4, 2003

CHAPTER NO. 231

[HB 700]

AN ACT REVISING LAWS RELATING TO THE ENVIRONMENT; PROVIDING THE BOARD OF ENVIRONMENTAL REVIEW WITH AUTHORITY FOR STAYING CERTAIN ACTIONS; ALLOWING THE BOARD TO REQUIRE A WRITTEN UNDERTAKING; AUTHORIZING THE BOARD TO ADOPT RULES FOR REGISTRATION OF SOURCES OF AIR CONTAMINANTS AND GENERAL PERMITS AND MULTIPLE SIMILAR SOURCES; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR GENERAL PERMITS FOR DISCHARGES FROM CATEGORIES OF POINT SOURCES; AMENDING SECTIONS 75-2-111, 75-2-204, 75-2-211, 75-2-218, 75-2-221, AND 75-5-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-111, MCA, is amended to read:

“75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant ~~thereto~~ *to that section*;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits, ~~and~~ permit applications, *and registrations* consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419.”

Section 2. Section 75-2-204, MCA, is amended to read:

“75-2-204. Rules relating to construction, installation, alteration, operation, or use. The board may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, unless ~~a permit~~ *the owner or operator has been obtained a permit* under this part *or has registered the source of air contaminants with the department if the source is in a category for which only registration is required by the rules adopted to implement this part.*”

Section 3. Section 75-2-211, MCA, is amended to read:

“75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance,

modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and [section 7], not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the

purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) ~~The department's decision on the application is not final unless until 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.~~

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) *the person requesting the stay is entitled to the relief demanded in the request for a hearing; or*

(ii) *continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.*

(c) *Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.*

(12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written notice that its application is considered filed pursuant to subsection (8) may:

(i) for a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.

(ii) for a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.

(b) The construction or operation of a temporary power generation unit or units described in subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units continues after a department decision to deny the permit application becomes final as provided in this section.

(c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the department's deadline any additional information that is necessary to process the permit application.

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued.

(13) (a) *The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:*

(i) *general permits covering multiple similar sources; or*

(ii) *other permits covering multiple similar sources.*

(b) *Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005—sec. 4, Ch. 588, L. 2001.)*

75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the

issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and [section 7], not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the

purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) ~~The department's decision on the application is not final unless until 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.~~

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) *the person requesting the stay is entitled to the relief demanded in the request for a hearing; or*

(ii) *continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.*

(c) *Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.*

(12) (a) *The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:*

(i) *general permits covering multiple similar sources; or*

(ii) *other permits covering multiple similar sources.*

(b) *Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."*

Section 4. Section 75-2-218, MCA, is amended to read:

"75-2-218. Permits for operation — application completeness — action by department — application shield — review by board. (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The board may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the board. The request for a hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) (a) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.~~

(b) *Except as provided in subsection (8), the filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for an informal hearing, that:*

(i) *the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or*

(ii) *continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the hearing.*

(c) *Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.*

(7) The requirements of subsections (5) and (6) *also* apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be compliance with the requirements of this chapter only if the permit expressly includes those requirements or an

express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217.”

Section 5. Section 75-2-221, MCA, is amended to read:

“75-2-221. Deposit of air quality permitting fees. (1) All money collected by the department pursuant to 75-2-111 and 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements of this chapter.

(2) Upon request, the expenditure by the department of funds in this account may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the audit.”

Section 6. Section 75-5-401, MCA, is amended to read:

“75-5-401. Board rules for permits — ground water exclusions. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and

that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) *The board may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an*

individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit.”

Section 7. Registration. The board may adopt rules for the registration of certain classes of sources of air contaminants in lieu of a permit application required under 75-2-211(2).

Section 8. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [section 7].

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective on passage and approval.

Section 11. Retroactive applicability. [Sections 3 and 4] apply retroactively, within the meaning of 1-2-109, to a request for a hearing or an appeal filed on or after January 1, 2003.

Approved April 4, 2003

CHAPTER NO. 232

[HB 41]

AN ACT REVISING THE LEGISLATIVE COUNCIL'S FUNCTIONS AND APPOINTMENT AUTHORITY REGARDING INTERSTATE, INTERNATIONAL, AND INTERGOVERNMENTAL ENTITIES; AMENDING SECTION 5-11-707, MCA; REPEALING SECTION 5-11-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, current law is confusing regarding the Legislative Council's role relating to legislative appointments to interstate, international, and intergovernmental entities that are not otherwise provided for under law; and

WHEREAS, this legislation clarifies that the Legislative Council is the appointing entity for legislative membership for voting purposes in organizations that include but are not limited to the Council of State Governments, the National Conference of State Legislatures, and the Legislative Council on River Governance.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 3], the following definitions apply:

(1) "Intergovernmental entity" means an organization, committee, delegation, or association of local, state, tribal, regional, or international governmental bodies.

(2) "International entity" means an organization, committee, delegation, or association that fosters and encourages cooperation, information exchange, or relations among nations.

(3) "Interstate entity" means an organization, committee, delegation, or association that fosters and encourages cooperation, information exchange, or relations among states.

(4) "Member" or "membership" means the authority to represent the Montana legislature for voting purposes in an interstate, international, or intergovernmental entity.

Section 2. Legislative council's role in interstate, international, and intergovernmental cooperation. The legislative council shall:

(1) encourage the state of Montana to develop and maintain mutually constructive contact and relations with interstate, international, and intergovernmental entities;

(2) promote mutually beneficial exchanges of information between the state of Montana and interstate, international, and intergovernmental entities;

(3) endeavor to advance cooperation between the state of Montana and interstate, international, and intergovernmental entities; and

(4) facilitate participation of the state of Montana as a member of appropriate interstate, international, and intergovernmental entities.

Section 3. Legislative council appointments to interstate, international, and intergovernmental entities. (1) Unless otherwise provided by law, the legislative council shall appoint legislators to serve as members of appropriate interstate, international, and intergovernmental entities.

(2) The president of the senate, the speaker of the house, the minority leader of the senate, and the minority leader of the house may recommend nominees for the legislative council's consideration in making appointments to interstate, international, and intergovernmental entities.

(3) If the legislative council appoints more than one legislator to participate as a member in an interstate, international, or intergovernmental entity, no more than 50% of the number of legislators appointed may be from one political party.

(4) If funds are available that the legislative council has the authority to expend, the legislative council, as the appropriate funding authority, may authorize that a legislator appointed as a member to an interstate, international, or intergovernmental entity be compensated, as provided in 5-2-302, for salary and expenses associated with participating in an entity-sponsored activity.

(5) If a vacancy occurs in membership to an interstate, international, or intergovernmental entity, appointment to fill the vacancy must be made in the same manner as the original appointment.

(6) The legislative council shall make appointments to any policy committee established by the Pacific Northwest economic region as provided in 5-11-707(2).

Section 4. Section 5-11-707, MCA, is amended to read:

"5-11-707. Appointment to Pacific Northwest economic region — vacancy. (1) Pursuant to 5-11-706, Article III, the governor or a designee and four legislators must be appointed to the delegate council of the Pacific Northwest economic region. The legislative members are appointed as follows:

(a) one member to be appointed by the president of the senate;

(b) one member to be appointed by the speaker of the house of representatives;

- (c) one member to be appointed by the minority leader of the senate; and
- (d) one member to be appointed by the minority leader of the house of representatives.

(2) If the Pacific Northwest economic region establishes policy committees under 5-11-706, Article V, appointments of legislators to the policy committees are to be made by the legislative council as provided in ~~5-11-301~~ [section 3].

(3) In the event that a vacancy occurs, appointment to fill the vacancy must be made in the same manner as the original appointment.”

Section 5. Repealer. Section 5-11-301, MCA, is repealed.

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 5, chapter 11, and the provisions of Title 5, chapter 11, apply to [sections 1 through 3].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2003

CHAPTER NO. 233

[HB 63]

AN ACT REPEALING THE STATUTORY DESIGNATION OF ASSETS AT CHIEF PLENTY COUPS STATE PARK AND PICTOGRAPH CAVE STATE PARK AS PRIORITIES FOR PRESERVATION AND FUNDING; REPEALING SECTION 23-1-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 23-1-130, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 4, 2003

CHAPTER NO. 234

[HB 129]

AN ACT EXTENDING THE AUTHORITY TO EXPEND UNEXPENDED FUNDS PREVIOUSLY APPROPRIATED FOR THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM TO THE PROGRAM TERMINATION DATE IN 2009; AMENDING SECTION 5, CHAPTER 529, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5, Chapter 529, Laws of 1999, is amended to read:

“Section 5. Appropriation. There is appropriated \$750,000 from the general license account to the department of fish, wildlife, and parks for the 2001 biennium for the purposes of [section 1]. Funds from the appropriation in this section that remain unexpended after the 2001 biennium may be expended during ~~the 2003 biennium~~ subsequent bienniums through the 2009 biennium for the purposes of [section 1].”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2003

CHAPTER NO. 235

[HB 236]

AN ACT CLARIFYING AND REVISING THE USE OF BONDS ISSUED FOR TECHNOLOGY PROJECTS; PROVIDING FOR THE USE OF REMAINING BOND PROCEEDS ALLOCATED TO THE DEPARTMENT OF REVENUE FOR STABILIZATION AND ASSESSMENT OF SOFTWARE AND DATA IN THE POINTS PROJECT, FOR THE PLANNING, DEVELOPMENT, ACQUISITION, INSTALLATION, ADMINISTRATION, AND IMPLEMENTATION OF INFORMATION TECHNOLOGY SYSTEMS TO REPLACE DEPARTMENT OF REVENUE INFORMATION TECHNOLOGY SYSTEMS, FOR THE PLANNING, DEVELOPMENT, AND IMPLEMENTATION OF BUSINESS PROCESS CHANGES TO FACILITATE AND ENABLE THE REPLACEMENT ACTIVITIES, AND FOR STAFFING A PROJECT MANAGEMENT OFFICE TO FACILITATE AND ENABLE THE REPLACEMENT AND BUSINESS PROCESS CHANGE ACTIVITIES; AMENDING SECTIONS 2 AND 8, CHAPTER 447, LAWS OF 1997, AND SECTIONS 2 AND 5, CHAPTER 519, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2, Chapter 447, Laws of 1997, is amended to read:

“Section 2. Appropriation of bond proceeds and approval of information technology information projects. Upon the sale of general obligation bonds by the board of examiners, the following bond proceeds are appropriated from the capital projects fund to each responsible agency for the following information technology projects:

Agency/Project	Bond Proceeds
DEPARTMENT OF REVENUE	
Integrated Revenue and Tax Systems (Consolidation of Employer's Reporting for Income Tax Withholding, Old Fund Liability Tax, and Unemployment Insurance Contributions; Income Tax Modernization; and Property Tax Integration; <i>Planning, Development, Acquisition, Installation, Administration, and Implementation of Information Technology Systems to Replace Department of Revenue Information Technology Systems; Planning, Development, and Implementation of Business Process Changes to Facilitate and Enable the Replacement Activities; and Staffing a Project Management Office to Facilitate and Enable the Replacement and Business Process Change Activities; and Stabilization of Software and Data in POINTS Project</i>)	\$14,000,000

DEPARTMENT OF ADMINISTRATION

Montana Project to Reengineer Revenue and the Information Management Environment (MT PRRIME)	19,800,000
--	------------

OFFICE OF BUDGET AND PROGRAM PLANNING

Montana Integrated Budget System (MIBS)	500,000
---	---------

DEPARTMENT OF LABOR

Unemployment Benefit Package	3,600,000
------------------------------	-----------

MONTANA UNIVERSITY SYSTEM

Technology Initiative	3,200,000
-----------------------	-----------

DEPARTMENT OF CORRECTIONS

Information Technology Plan	1,890,408”
-----------------------------	------------

Section 2. Section 8, Chapter 447, Laws of 1997, is amended to read:

“Section 8. Expenditures. Expenditures of bond proceeds under [sections 1 through 8] may be used for information technology project administration and implementation, including software and required hardware, software licensing, and contracted services. *The remaining amount of bond proceeds allocated to the department of revenue for the MT PRRIME project may be used on the stabilization and assessment of software and data in the POINTS project, on planning, development, acquisition, installation, administration, and implementation of information technology systems to replace department of revenue information technology systems and planning, development, and implementation of business process changes to facilitate and enable the replacement activities, and on staffing of a project management office to facilitate and enable the replacement and business process change activities.*”

Section 3. Section 2, Chapter 519, Laws of 1999, is amended to read:

“Section 2. Appropriation of bond proceeds and approval of information technology project. Upon the sale of general obligation bonds by the board of examiners, the following bond proceeds are appropriated from the capital projects fund for the following projects:

Agency/Project	Bond Proceeds
----------------	---------------

DEPARTMENT OF REVENUE

Project META and stabilization of software and data in the POINTS project	\$18,000,000
---	--------------

MONTANA UNIVERSITY SYSTEM

Banner Project	800,000”
----------------	----------

Section 4. Section 5, Chapter 519, Laws of 1999, is amended to read:

“Section 5. Expenditures. (1) Except as provided in subsection (2), bond proceeds under [sections 1 through 4] may be used only for information technology project administration and implementation, including software and required hardware, software licensing, and contract services. ~~The~~ *Except as provided in this subsection, the department of revenue and the Montana university system are prohibited from using any of the proceeds from the sale of bonds, authorized by [sections 1 through 5], for agency current level operating expenses. The department of revenue may use remaining bond proceeds issued for project META for stabilization and assessment of software and data in the*

POINTS project, on planning, development, acquisition, installation, administration, and implementation of information technology systems to replace department of revenue information technology systems and planning, development, and implementation of business process changes to facilitate and enable the replacement activities, and on staffing of a project management office to facilitate and enable the replacement and business process change activities.

(2) All of the bonds authorized and issued for the Montana university system under [sections 1 through 4] must be used to reduce student fees levied for information technology purposes.”

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to acts and expenditures after November 1, 2002.

Approved April 7, 2003

CHAPTER NO. 236

[HB 272]

AN ACT PROHIBITING A STATE AGENCY FROM OFFSETTING A DEBT OWED BY A LOCAL GOVERNMENT AGAINST THE ENTITLEMENT SHARE PAYMENT OWED TO A LOCAL GOVERNMENT; AMENDING SECTIONS 15-1-121 AND 17-4-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government’s base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

- (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
- (d) district court fees pursuant to:
 - (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
 - (ii) 25-1-202;
 - (iii) 25-1-1103;
 - (iv) 25-9-506;
 - (v) 25-9-804; and
 - (vi) 27-9-103;
- (e) certificate of ownership fees for manufactured homes pursuant to 15-1-116;
- (f) financial institution taxes pursuant to Title 15, chapter 31, part 7;
- (g) coal severance taxes allocated for county land planning pursuant to 15-35-108;
- (h) all beer, liquor, and wine taxes pursuant to:
 - (i) 16-1-404;
 - (ii) 16-1-406; and
 - (iii) 16-1-411;
- (i) late filing fees pursuant to 61-3-201;
- (j) title and registration fees pursuant to 61-3-203;
- (k) disabled veterans' flat license plate fees and purple heart license plate fees pursuant to 61-3-332;
- (l) county personalized license plate fees pursuant to 61-3-406;
- (m) special mobile equipment fees pursuant to 61-3-431;
- (n) single movement permit fees pursuant to 61-4-310;
- (o) state aeronautics fees pursuant to 67-3-101; and
- (p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) Beginning with fiscal year 2002 and in each succeeding fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for

consolidated local governments. Beginning with calendar year 2004, by October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

- (A) counties;
- (B) consolidated local governments; and
- (C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	\$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - # 2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	\$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula	County Airport Industrial	\$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) \$0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter

of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(13) *A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1.*

Section 2. Section 17-4-105, MCA, is amended to read:

“17-4-105. Authority to collect debt — offsets. (1) Once a debt of an agency has been transferred to the department, the department may collect it. The department may contract with commercial collection agents for recovery of debts owed to agencies.

(2) The department shall, when appropriate, offset any amount due an agency from a person or entity against any amount, including refunds of taxes, owing the person or entity by an agency. The department may not exercise this right of offset until the debtor has first been notified by the department and been given an opportunity for a hearing pursuant to 15-1-211. An offset may not be made against any amount paid out as child support collected by the department of public health and human services. The department shall deduct from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due the agencies, the amount

available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner determined appropriate by the department.

(3) (a) The department may enter into an agreement with the federal government to offset against tax refunds payable by the federal government and pay to this state those taxes or other debts owed to an agency of this state.

(b) (i) The department may enter into an agreement with another state or an agency of another state to offset against tax refunds payable by the other state or agency of the other state and pay to this state those taxes or other debts owed to this state or an agency of this state.

(ii) To facilitate an agreement of the kind authorized by subsection (3)(b)(i), the department may enter into an agreement that allows the other state or agency of the other state to offset against tax refunds payable by this state the whole or part of an amount owed for taxes to the other state or agency of the other state. However, the department may enter into an agreement of the type authorized by this subsection (3)(b)(ii) only if the other state or agency of the other state allows this state or an agency of this state to offset against tax refunds owed by the other state or agency of the other state taxes or other debts owed to this state or an agency of this state.

(c) A state or agency of another state entering into an agreement with the department pursuant to subsection (3)(b)(ii) may not exercise the offset against tax refunds unless the other state or agency of the other state has notified the taxpayer of the taxes due and has given the taxpayer an opportunity for review or appeal of the tax debt. Another state or agency of another state intending to offset taxes shall provide the department with proof of notification and opportunity for review or appeal before the offset is exercised.

(4) (a) A debt owed to the department of public health and human services or being collected by the department of public health and human services on behalf of any person or agency may be offset by the department if the debt is being enforced or collected by the department of public health and human services under Title IV-D of the Social Security Act.

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the department for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided for in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The request must be in writing and be mailed to the department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and a decision made as a result of that proceeding has become final. The hearing must initially be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of public health and human services shall adopt rules governing the hearing procedures.

(5) If the department determines that a person or entity has refused or neglected to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity. If the claim is approved by the department, the claim has the same force and effect as though filed by the person or entity. The amount due any person or entity from

the state or any agency of the state is the net amount otherwise owing the person or entity after any offset, as provided in this section.

(6) A debt owed to a state agency by a local government may not be offset against a payment due to a local government pursuant to 15-1-121."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2003

CHAPTER NO. 237

[HB 319]

AN ACT GENERALLY REVISING LAWS RELATING TO CREDIT UNIONS; CLARIFYING THE USE OF "CREDIT UNION" IN THE NAME OF CREDIT UNIONS; AUTHORIZING OUT-OF-STATE CREDIT UNIONS TO DO BUSINESS IN THIS STATE UNDER CERTAIN CONDITIONS; AUTHORIZING MONTANA CREDIT UNIONS TO CONDUCT BUSINESS IN OTHER STATES UNDER CERTAIN CONDITIONS; GENERALLY REPLACING REFERENCES TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION WITH REFERENCES TO THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR EXAMINATIONS OF CREDIT UNIONS ON A SCHEDULE DETERMINED BY THE DEPARTMENT RATHER THAN ON AN ANNUAL BASIS; ESTABLISHING CRITERIA FOR CEASE AND DESIST ORDERS AND INVOLUNTARY DISSOLUTION; REVISING SUSPENSION CRITERIA; ESTABLISHING CRITERIA FOR APPOINTING A CONSERVATOR FOR A CREDIT UNION; ESTABLISHING CRITERIA FOR THE INVOLUNTARY MERGER OF A CREDIT UNION; PROVIDING FOR THE CONFIDENTIALITY OF CERTAIN CREDIT UNION INFORMATION MAINTAINED BY THE DEPARTMENT OF ADMINISTRATION; REVISING CERTAIN ORGANIZATIONAL AND ADMINISTRATIVE PROCEDURES OF CREDIT UNIONS; REVISING VOLUNTARY LIQUIDATION AND MERGER PROCEDURES; REVISING BOARD OF DIRECTORS AND COMMITTEE PROCEDURES; REVISING ACCOUNT, SHARE, AND LOAN PROVISIONS; REVISING RESERVE REQUIREMENTS; AMENDING SECTIONS 32-3-103, 32-3-201, 32-3-202, 32-3-203, 32-3-204, 32-3-205, 32-3-206, 32-3-301, 32-3-302, 32-3-303, 32-3-307, 32-3-310, 32-3-321, 32-3-322, 32-3-323, 32-3-401, 32-3-403, 32-3-404, 32-3-408, 32-3-411, 32-3-412, 32-3-414, 32-3-417, 32-3-505, 32-3-506, 32-3-508, 32-3-601, 32-3-602, 32-3-604, 32-3-608, 32-3-611, 32-3-702, 32-3-703, AND 32-3-705, MCA; AND REPEALING SECTION 32-3-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3-103, MCA, is amended to read:

"32-3-103. Use of name exclusive. (1) *The name of any credit union organized under this chapter must include the phrase "credit union". A credit union may not adopt a name either identical to the name of any other credit union doing business in this state or so similar as to be misleading or to cause confusion.*

(2) ~~With the exception of~~ *A person, other than a credit union organized under the provisions of this chapter or of any other credit union act or an association organization or corporation whose membership or ownership is primarily limited to credit unions or credit union organizations, a recognized chapter*

thereof, any person, corporation, partnership, or association using *may not use* a name or title containing the words "credit union" or any derivation thereof of the words "credit union", ~~or representing themselves in their advertising or otherwise as conducting business as~~ and the person may not represent that the person is a credit union and may not conduct business as a credit union.

(3) *A person who violates a provision of this section shall be fined not more than \$500 or imprisoned not more than 1 year, or both, and may be permanently enjoined from using such words in its name further violation of the provisions of this section.*"

Section 2. Out-of-state credit unions. (1) A credit union chartered under the laws of another state or territory of the United States may conduct business as a credit union in this state with the approval of the department of administration, provided that credit unions incorporated under this chapter are allowed to do business in the other state or territory under conditions similar to these provisions.

(2) Before granting approval to do business in this state, the department must find that an out-of-state credit union:

- (a) is a credit union organized under laws similar to this chapter;
- (b) is financially solvent;
- (c) has account insurance comparable to that required for credit unions incorporated under this chapter;
- (d) is examined and supervised by a regulatory agency of the state in which it is organized; and
- (e) needs to conduct business in this state to adequately serve its members in this state.

(3) An out-of-state credit union may not conduct business in this state unless it:

- (a) complies with the consumer protection statutes and rules applicable to credit unions incorporated under this chapter;
- (b) agrees to furnish the department with a copy of the examination report conducted by its regulatory agency or to submit to an examination by the department; and
- (c) designates and maintains an agent for the service of process in this state.

(4) The department may revoke the approval of an out-of-state credit union conducting business in this state if the department finds that:

- (a) the credit union no longer meets the requirements of subsection (2);
- (b) the credit union has violated the laws of this state or lawful rules or orders issued by the department;
- (c) the credit union has engaged in a pattern of unsafe or unsound credit union practices;
- (d) continued operation by the credit union is likely to have a substantially adverse impact on the financial, economic, or other interests of residents of this state; or
- (e) the credit union is prohibited from operating in its own home state.

Section 3. Conducting business outside this state. (1) A credit union chartered under this chapter may conduct business outside of this state in other

states or territories where it is permitted to conduct business as a credit union, under conditions substantially similar to the provisions of this chapter.

(2) If another state or territory's credit union laws or regulations allow credit unions operating in that state or territory to exercise additional powers not allowed in this state, the credit union conducting business outside this state may request permission from the department of administration to exercise those additional powers while operating in that state.

(3) Upon request for approval to exercise a power not allowed in this state, submitted by certified mail, return receipt requested, the department shall respond with a determination in not more than 60 days. For good cause shown within the 60-day period, the department may extend the response period for an additional 30 days. If a response is not received within 60 days or 90 days, as applicable, the requesting credit union may exercise the power.

Section 4. Section 32-3-201, MCA, is amended to read:

"32-3-201. Director of department Department of administration. (1) The ~~director of the~~ department of administration shall administer the laws of this state relating to credit unions. The ~~director~~ department may appoint or employ special assistants, deputies, examiners, or other employees that are necessary for the purpose of administering or enforcing this chapter.

(2) The ~~director~~ department may adopt rules for the administration of this chapter and may establish chartering, supervisory, and examination fees. Fees collected must be deposited in the state special revenue fund for the use of the department in its supervision function.

(3) The ~~director~~ department shall adopt rules prescribing the minimum amount of surety bond coverage and casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved or their exposure to risk.

(4) *The department may enter into agreements with other states establishing the division of supervisory responsibilities between the state in which a credit union is organized and the state or states in which the credit union's branches may be located.*"

Section 5. Section 32-3-202, MCA, is amended to read:

"32-3-202. Reports. (1) Credit unions organized under this chapter shall report to the ~~director~~ department of administration annually on or before February 1 on forms supplied by ~~him~~ the department for that purpose. Additional reports may be required.

(2) A fine of \$5 for each day a report is in arrears ~~shall~~ must be levied against the offending credit union unless it is excused for cause by the ~~director~~ department."

Section 6. Section 32-3-203, MCA, is amended to read:

"32-3-203. Examinations. (1) The department of administration shall ~~annually~~ examine or cause to be examined each credit union *on a schedule determined by the department*. Each credit union and all of its officers and agents ~~must be required to~~ shall give to representatives of the ~~director of the~~ department full access to all books, papers, securities, records, and other sources of information under their control. For the purpose of the examination the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination must be forwarded to the executive officer of each credit union promptly after completion. The report must contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and committee members shall meet to consider matters contained in the report.

(3) In lieu of making an ~~annual~~ examination of a credit union, the ~~director department~~ may accept an audit report of the condition of the credit union made by an auditor approved by the ~~director department~~. The cost of the audit must be borne by the credit union."

Section 7. Section 32-3-204, MCA, is amended to read:

"32-3-204. Records. (1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with rules that ~~the director of~~ the department of administration prescribes. In prescribing rules, the ~~director department~~ shall consider the relative size of a credit union and its reasonable capability of compliance.

(2) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the ~~director department~~.

(3) A photostatic or photographic copy or reproduction of any kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form, of any credit union records ~~must be~~ is admissible as evidence of transactions with the credit union."

Section 8. Section 32-3-205, MCA, is amended to read:

"32-3-205. Suspension Cease and desist orders — suspension — involuntary liquidation. (1) ~~The department of administration may issue cease and desist orders after having determined, from competent and substantial evidence, that a credit union:~~

(a) *is engaged or is about to engage in an unsafe or unsound practice; or*

(b) *is violating or has violated a material provision of any law, rule, or condition imposed in writing by the department or any written agreement made with the department.*

(2) (a) *The department may suspend from office and prohibit from further participation in any manner in the conduct of the affairs of a credit union any director, officer, or committee member who has committed any violation of a law, rule, or cease and desist order, who has engaged in or participated in any unsafe or unsound practice in connection with the credit union, or who has committed or engaged in any act, omission, or practice that constitutes a breach of that person's fiduciary duty as a director, officer, or committee member when the department has determined that:*

(i) *the action of the director, officer, or committee member has resulted or will likely result in substantial financial loss or other damage;*

(ii) *the interests of the credit union's members have been or may be prejudiced by the action of the director, officer, or committee member;*

(iii) *the director, officer, or committee member has received financial gain or other benefit as a result of the action; or*

(iv) *the action of the director, officer, or committee member involves personal dishonesty or demonstrates unfitness to serve as a director, officer, or committee member.*

(b) A director, officer, or committee member suspended from office pursuant to subsection (2)(a) may request a hearing under the Montana Administrative Procedure Act.

~~(1)~~(3) (a) If it appears that ~~any~~ a credit union is bankrupt or insolvent or that it has willfully violated this chapter or is operating in an unsafe or unsound manner, the ~~director of the department of administration shall~~ may issue an order temporarily suspending the credit union's operations for not less than 30 or more than 60 days. The board of directors must be given notice by certified mail of the suspension. The notice must include a list of the reasons for the suspension and a list of the specific violations of this chapter.

~~(2)~~(b) Upon receipt of a suspension notice, the credit union shall cease all operations, except those authorized by the ~~director department, or the department may appoint a conservator to operate the credit union during the period of suspension.~~ The ~~credit union board of directors shall then~~ file with the ~~director department~~ a reply to the suspension notice and ~~may request a hearing to~~ present a plan of *proposed* corrective actions ~~proposed~~ if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

~~(3)~~(c) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected *or upon acceptance of a plan of proposed corrective actions*, the ~~director department~~ may revoke the suspension notice and permit the credit union to resume normal operations.

~~(4)~~(d) If the ~~director department~~, after issuing a notice of suspension ~~and providing an opportunity for a hearing~~, rejects the credit union's plan to continue operations, ~~the director may issue a notice of involuntary liquidation and appoint a liquidating agent.~~ The credit union may request the appropriate court to stay execution of the action. ~~Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section the board may request an administrative hearing.~~

~~(5)~~(4) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing *or if after a hearing, the department continues to reject the credit union's plan to continue operations*, the ~~director department may then~~:

(a) *permit the credit union to operate under a conservator until conditions requiring suspension are remedied;*

(b) *involuntarily merge the credit union in accordance with the provisions of [section 10]; or*

(c) *revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union.*

(5) *The department may not involuntarily merge or involuntarily liquidate a credit union prior to the suspension procedures outlined in this section. A credit union may petition the appropriate court to stay the department's suspension, involuntary merger, or involuntary liquidation order.*

(6) *In the event of liquidation of a credit union, the assets of the credit union or the proceeds from the disposition of the credit union's assets must be applied and distributed in the following sequence:*

(a) *to secured creditors up to the value of their secured collateral;*

(b) *for the costs and expenses of liquidation;*

- (c) for wages due employees of the credit union;
- (d) for taxes owed to any government unit;
- (e) for any debts owed the United States;
- (f) to general creditors and to secured creditors to the extent that their claims exceed the value of their collateral; and
- (g) to shareholders of the credit union to the extent of their uninsured shares.”

Section 9. Conservatorship. (1) In conjunction with a suspension order or if the department of administration's examination has been obstructed or impeded, the department may appoint itself or appoint any other competent person as conservator to immediately take possession and control of the business and assets of a credit union. The conservator, representing the best interest of the credit union members, must be vested with the full power of management of the credit union.

(2) Not later than 15 days after the date on which the conservator takes possession and control of the business and assets of a credit union pursuant to subsection (1), the credit union may apply to the appropriate court for an order requiring the department to show cause why the department or the designated conservator should not be enjoined from continuing possession and control.

(3) Except as provided in subsection (2), the conservator may maintain possession and control of the business and assets of the credit union and may operate the credit union until:

- (a) the department permits the credit union's officials to continue business subject to any terms and conditions the department imposes; or
- (b) the credit union is involuntarily merged or involuntarily liquidated in accordance with the provisions of 32-3-205.

(4) The department may appoint any agents considered necessary to assist the conservator in carrying out the duties of the conservator under this section.

(5) All expenses incurred by the conservator in exercising the authority of that office under this section with respect to a credit union must be paid out of the assets of the credit union, except that the department may waive all or a part of the expenses.

Section 10. Involuntary merger. The department of administration may initiate the involuntary merger of a credit union that is insolvent or in danger of insolvency with any other credit union or may authorize a credit union to purchase any of the assets of or assume any of the liabilities of any other credit union that is insolvent or in danger of insolvency if the department is satisfied that:

- (1) an emergency requiring expeditious action exists with respect to a credit union that is insolvent or in danger of insolvency;
- (2) other alternatives are not reasonably available; and
- (3) the public interest would best be served by approval of the merger, purchase, or assumption.

Section 11. Confidentiality — penalties. (1) (a) Any report of examination issued under 32-3-203, any report made by a credit union under 32-3-202, and any other credit union documentation maintained by the department of administration, other than those reports that are required to be published, must be considered confidential information. The information may

not be imparted to persons who are not officially associated with the department, and the information contained in the reports and statements may be used by the department only in the furtherance of its official duties.

(b) The department may exchange information with federal credit union regulatory agencies and with the financial regulatory departments of other states. The department may furnish information to the legislative auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in subsection (1)(b), be imparted to any person not officially associated with the department. The information may be used by the department only in the furtherance of its official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a credit union is guilty of a felony and must be removed from office. Upon conviction, the person shall be fined an amount not exceeding \$1,000, be imprisoned in a state correctional facility for a term not exceeding 5 years, or both.

Section 12. Section 32-3-206, MCA, is amended to read:

“32-3-206. Authorized activities of credit unions. Upon written application to the ~~director~~ *department of administration*, a credit union may engage in any activity in which ~~such~~ a credit union could engage *if it were not operating as a federal chartered credit union at the time such the authority is granted.* ~~Such powers~~ *The activities shall* include, but are not ~~by way of limitation~~ *limited to*, the power to do any act and to own, possess, and carry as assets property of ~~such character~~ including stocks, bonds, or other debentures ~~which that~~, at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions, ~~notwithstanding and are not subject to~~ any restrictions ~~elsewhere contained elsewhere in the statutes of the state of Montana law.~~ *except that the* ~~However, the director department~~ may not charter a credit union not having a common bond of membership as defined in 32-3-304. The ~~director department~~ shall approve an activity if ~~he~~ *it* finds that ~~the activity~~ fosters competitive equality between state and federal credit unions and prevents adverse effects on members of state-chartered credit unions. If the ~~director department~~ disapproves an activity, the credit union must be given an opportunity for a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a compelling reason exists for denying approval of the activity for which the credit union applied.”

Section 13. Section 32-3-301, MCA, is amended to read:

“32-3-301. Organization procedure. (1) Any seven or more residents of this state who are of legal age and who have a common bond, as described in 32-3-304, may organize a credit union and become charter members of the credit union by complying with this section.

(2) The subscribers shall execute, in duplicate, articles of incorporation that conform to the applicable Montana corporation law and shall agree to the terms of the articles. The articles must state:

(a) the name, which must include the words “credit union” and which ~~may not be the same as that of any other existing credit union in this state~~ *must conform with the provisions of 32-3-103*, and the location where the proposed credit union is to have its principal place of business;

- (b) that the existence of the credit union is perpetual;
 - (c) the par value of the shares of the credit union, which must be in \$5 multiples of not less than \$5 or more than \$25;
 - (d) that the credit union is organized under this chapter for the purposes set forth in the articles;
 - (e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which may be not less than \$5; and
 - (f) that the credit union may exercise incidental powers that are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers that are inherent in the credit union as a legal entity.
- (3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and execute the bylaws in duplicate.
- (4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee if the bylaws provide for a supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, must be executed by the parties. This agreement must be submitted to the ~~director of the~~ department of administration.
- (5) The subscribers shall forward the articles of incorporation and the bylaws to the ~~director of the~~ department of administration. The ~~director department~~ may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter and if the ~~director department~~ is satisfied that the proposed field of operation is favorable to the success of the credit union and that the standing of the proposed organizers gives assurance that the credit union's affairs will be properly administered. The ~~director department~~ shall return to the applicants or their representatives a copy of the bylaws and the articles, which must be preserved in the permanent files of the credit union. The application must be acted upon within 30 days. The articles of incorporation must be filed with the secretary of state who, upon payment of the fees for filing the articles, shall issue a certificate of incorporation.
- (6) The subscribers for a credit union charter may not transact any business until formal approval of the charter has been received.
- (7) *If the department denies a certificate of approval, the subscribers may request a hearing under the Montana Administrative Procedure Act.*

Section 14. Section 32-3-302, MCA, is amended to read:

"32-3-302. Form of articles and bylaws. In order to simplify the organization of credit unions, the ~~director of the~~ department of administration shall ~~cause to be prepared~~ *prepare* a form of articles of incorporation and a form of bylaws, consistent with this chapter, ~~which that~~ may be used by credit union incorporators for their guidance. The articles of incorporation and bylaws must be available without charge to persons desiring to organize a credit union."

Section 15. Section 32-3-303, MCA, is amended to read:

"32-3-303. Amendments. (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of

incorporation or bylaws must be submitted, *by certified mail, return receipt requested*, to the ~~director of the~~ department of administration, ~~who~~ which shall approve or disapprove the amendments within 60 days.

(2) Amendments become effective upon:

(a) approval in writing by the ~~director~~ department, for which a fee may not be charged; and

(b) in the case of articles of incorporation, filing with the secretary of state.

(3) *If the department does not approve or disapprove the amendments within the 60-day period, the amendments must be considered approved, except that the department may extend the approval period for an additional 30 days for good cause as stated in a written notice given to the credit union within the original 60-day period.*

Section 16. Section 32-3-307, MCA, is amended to read:

“32-3-307. Limited-income persons. Existing credit unions may include within their field of membership limited-income persons, as defined by the ~~director of the~~ department of administration, for whom credit union services are otherwise unavailable.”

Section 17. Section 32-3-310, MCA, is amended to read:

“32-3-310. Meetings of members. (1) The annual meeting and any special meetings of the members of the credit union ~~shall~~ must be held at the time, place, and in the manner indicated by the bylaws.

(2) At all ~~such~~ meetings a member ~~shall have but~~ has only one vote, irrespective of ~~his~~ the member’s shareholdings. ~~No~~ A member may not vote by proxy, but a member may vote by absentee ballot or mail ballot if the bylaws of the credit union so provide.

(3) A society, association, partnership, or corporation having membership in the credit union may be represented and have its vote cast by one of its members or shareholders, provided ~~such~~ that the person has been fully authorized by the organization’s governing body.

(4) The board of directors may establish a minimum age, not greater than 18 years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both.”

Section 18. Section 32-3-321, MCA, is amended to read:

“32-3-321. Liquidation. (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section ~~and the applicable Montana corporation laws.~~

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the ~~president~~ *presiding officer of the board* shall notify the ~~director of the~~ department of administration in writing, setting forth the reasons for the proposed action and a plan for liquidation. Within 10 days after the members act on the question of liquidation, the ~~president~~ *presiding officer of the board* shall notify the ~~director~~ department in writing as to whether or not the members approved the proposed liquidation.

~~(4) As soon as the board of directors decides to submit the question of liquidation to the members, Depending on the credit union's circumstances, a liquidation plan may or may not require the suspension of payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting new loans, or other similar financial transactions must be suspended pending action by members on the proposal to liquidate. On approval by the members of the proposal, all business transactions must be permanently discontinued. Necessary expenses of operation must continue to be paid on authorization of the board of directors or liquidating agent or committee during the period of liquidation.~~

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing must be given to each member, by first-class mail, at least 10 days prior to the meeting.

(6) If liquidation is approved, the board of directors shall appoint a liquidating agent or committee for the purpose of conserving and collecting assets, closing the affairs of the credit union, and distributing the assets as required by this chapter.

~~(6)~~(7) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing debts and obligations until its affairs are fully adjusted.

~~(7) The board of directors or the liquidating agent shall use the assets of the credit union to pay:~~

~~(a) expenses incidental to liquidating, including any surety bond that may be required;~~

~~(b) any liability due nonmembers; and~~

~~(c) special purpose thrift accounts as provided in this chapter. Remaining assets must be distributed to the members proportionately to the shares held by each member as of the date dissolution was approved.~~

(8) The liquidating agent or committee shall distribute the assets of the credit union or the proceeds of any disposition of the assets in the sequence described in 32-3-205(6).

~~(8)~~(9) As soon as the board of directors or the liquidating agent or committee determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, the ~~board or the liquidating agent or committee~~ shall execute a certificate of dissolution on a form prescribed by the department. The form, together with all pertinent books and records of the liquidating credit union, must be filed with the department *and the secretary of state*. Upon filing *with both entities*, the credit union is dissolved.

(10) If the department determines that the liquidating agent or committee has failed to make reasonable progress in the liquidating of the credit union's affairs and distribution of its assets or has violated a provision of this chapter, the department may issue a cease and desist order against the liquidating agent or committee and appoint a new liquidating agent to complete the liquidation under the department's direction and control. The department shall fill any

vacancy caused by the resignation, death, illness, removal, desertion, or incapacity to function of the liquidating agent."

Section 19. Section 32-3-322, MCA, is amended to read:

"32-3-322. Merger. (1) Any credit union may, with the approval of the ~~director of the department of administration and compliance with the applicable Montana corporation law,~~ merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members called for that purpose.

(2) After agreement by ~~the~~ *each board of directors* and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which must set forth all of the following:

(a) the time and place of the meeting of ~~the~~ *each board of directors* at which the plan was agreed upon;

(b) the vote in favor of the adoption of the plan;

(c) a copy of the resolution or other action by which the plan was agreed upon;

(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) the vote by which the plan was approved by the members.

(3) The certificate and a copy of the plan of merger agreed upon must be forwarded to the ~~director~~ *department*, certified by the ~~director~~ *department*, and returned to both credit unions within 30 days. *A copy of the certificate of merger and certified plan must be filed with the secretary of state by the surviving credit union.*

(4) Upon return of the certificate from the ~~director~~ *department*, all property rights and members' interest of the merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union are considered to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union remain intact.

(5) This section must be construed, whenever possible, to permit a credit union chartered under any other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge with one chartered under any other law."

Section 20. Section 32-3-323, MCA, is amended to read:

"32-3-323. Conversion of charter. (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the ~~director of the~~ department of administration.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect a conversion, a credit union shall comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of

the ~~director of the department of administration~~ and file proof of compliance with the ~~director department.~~"

Section 21. Section 32-3-401, MCA, is amended to read:

"32-3-401. General powers. A credit union may:

- (1) make contracts as provided for in this chapter;
- (2) sue and be sued;
- (3) adopt and use a common seal and alter ~~same~~ *the seal*;
- (4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental to its operations;
- (5) at the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;
- (6) receive savings from its members in the form of shares or special-purpose thrift accounts;
- (7) lend its funds to its members as hereinafter provided;
- (8) borrow from any source up to 50% of total assets, after deduction of the notes payable account;
- (9) discount and sell any eligible obligations, subject to rules prescribed by the ~~director department of administration~~;
- (10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the ~~director department~~;
- (11) invest surplus funds as provided in this chapter;
- (12) make deposits in legally chartered banks, savings banks, building and loan associations, savings and loan associations, trust companies, and central type credit union organizations;
- (13) assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union;
- (14) hold membership in other credit unions organized under this chapter or other laws and in other associations and organizations composed of credit unions;
- (15) declare dividends and pay interest refunds to borrowers as provided in this chapter;
- (16) collect, receive, and disburse ~~moneys~~ *money* in connection with the sale of negotiable checks, money orders, and other money type instruments and for such other purposes as may provide benefit or convenience to its members and charge a reasonable fee for ~~such~~ *the* services;
- (17) perform ~~such~~ tasks and missions *as that* are requested by the federal government or this state or any agency or political subdivision ~~thereof of the federal government or this state~~, when approved by the board of directors and not inconsistent with this chapter;
- (18) contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership, subject to ~~such~~ regulations ~~as are~~ prescribed by the ~~director department~~;

(19) make donations or contributions to any civic, charitable, or community organizations as authorized by the board of directors, subject to regulations ~~as are~~ prescribed by the ~~director~~ department;

(20) purchase or make available insurance for its directors, officers, agents, employees, and members;

(21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension funds of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under any other pension or profit-sharing plan if the funds of ~~such~~ *the* accounts are invested in shares of the credit union; or

(22) act as fiscal agent for and receive deposits from the federal government, this state, or any agency or political subdivision ~~thereof of the federal government or this state.~~

Section 22. Section 32-3-403, MCA, is amended to read:

“32-3-403. Election or appointment of officials. (1) The credit union must be directed by a board, consisting of an odd number of at least five directors, to be elected at the annual membership meeting by and from the members. All members of the board shall hold office for terms that the bylaws provide.

(2) The board of directors shall appoint a supervisory committee of not less than three members at the organization meeting and within 30 days following each annual meeting of the members for terms that the bylaws provide. However, the bylaws of the credit union may provide that the supervisory committee members are elected for terms that the bylaws provide by the members of the credit union at the annual meeting of the members or may provide that the credit union may not have a supervisory committee. If the bylaws provide that the credit union may not have a supervisory committee, the duties and powers of the supervisory committee, as described in 32-3-417 and 32-3-418(1), are the responsibility of the board of directors.

(3) ~~The~~ *As provided in the bylaws, the* board of directors shall appoint ~~or the members shall elect~~ a credit committee, consisting of an odd number of at least three members, for terms that the bylaws provide. ~~or, In lieu of a credit committee, the bylaws may provide that the board of directors shall appoint a credit manager.”~~

Section 23. Section 32-3-404, MCA, is amended to read:

“32-3-404. Record of board and committee members. Within ~~15~~ 30 days after election or appointment, a record of the names and addresses of the members of the board, committees, and all officers of the credit union must be filed with the department of administration on forms provided by the department.”

Section 24. Section 32-3-408, MCA, is amended to read:

“32-3-408. Executive officers. (1) At their ~~organization~~ *next* meeting ~~and within 15 days~~ following each annual meeting of the members, the directors shall elect from their own number:

(a) ~~an executive officer, who may be designated as chairman~~ *a presiding officer* of the board ~~or president;~~

(b) ~~a vice chairman~~ *one or more vice presiding officers* of the board ~~or one or more vice presidents;~~

- (c) a treasurer; and
- (d) a secretary.
- (2) The treasurer and the secretary may be the same individual.
- (3) The persons so elected ~~shall~~ *must* be the executive officers of the corporation.
- (4) The terms of the officers ~~shall~~ *must* be 1 year or until their successors are chosen and have duly qualified.
- (5) The duties of the officers ~~shall~~ *must* be prescribed in the bylaws.
- (6) The board of directors may employ an officer in charge of operations, whose title ~~shall~~ *must* be either president or general manager or president and general manager; or, ~~in lieu thereof,~~ the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union."

Section 25. Section 32-3-411, MCA, is amended to read:

"32-3-411. Meetings of board of directors and committees (1) *Either the board of directors and or the executive committee shall meet each month. ~~as often~~ The board of directors or the executive committee may meet at other times as necessary, but one body must meet at least monthly and the other at least quarterly.*

(2) *Unless specifically prohibited by the bylaws, directors and members of the supervisory committee or credit committee may participate in and act at any meeting of the board or the supervisory or credit committee through the use of communications equipment that enables all persons participating in the meeting to communicate with each other. Participation in the meeting in this manner constitutes attendance.*

(3) *Unless specifically prohibited by the bylaws, any action required by this chapter to be taken at a meeting of the board of directors or a committee or any other action that may be taken at a meeting of the board of directors or a committee may be taken without a meeting if a consent in writing setting forth the action taken is signed by all the directors of the board or the committee members entitled to vote with respect to the subject matter of the action taken. The written consents must be evidenced by one or more written approvals, each of which sets forth the action taken and bears the signature of one or more board directors or committee members. All the approvals evidencing the consent must be delivered to the secretary to be filed in the corporate records of the credit union. The action taken is effective when all the directors or committee members have approved the consent unless the consent specifies a different effective date. A consent signed by all the directors or committee members has the same effect as a unanimous vote and may be stated as a unanimous vote in any document filed with the department under this chapter."*

Section 26. Section 32-3-412, MCA, is amended to read:

"32-3-412. Duties of directors. The directors shall:

- (1) act upon applications for membership or appoint one or more membership officers to approve applications for membership under ~~such~~ conditions ~~as prescribed by the board~~ *prescribes*. A record of a membership officer's approval or denial of membership ~~shall~~ *must* be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board.

(2) purchase a blanket fidelity bond, in accordance with any rules of the ~~director~~ *department of administration*, to protect the credit union against losses caused by occurrences covered ~~therein~~ *by the bond* such as fraud, dishonesty, forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, or other agent. However, the directors have the option of providing coverage under this subsection for only the treasurer elected by the board.

(3) determine from time to time the interest rate or rates consistent with this chapter to be charged on loans and authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on ~~such~~ classes of loans and under ~~such~~ conditions ~~as prescribed by the board prescribes~~;

(4) fix from time to time the maximum amount ~~which that~~ may be loaned to any one member;

(5) declare dividends on shares in the manner and form provided in the bylaws;

(6) limit the number of shares ~~which that~~ may be owned by a member, ~~such the~~ limitations to apply alike to all members;

(7) have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;

(8) authorize the employment of ~~such~~ persons necessary to carry on the business of the credit union, including the credit manager, loan officers, and auditing assistants requested by the supervisory committee, and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors;

(9) authorize the conveyance of property;

(10) borrow or lend money to carry on the functions of the credit union;

(11) designate a depository or depositories for the funds of the credit union;

(12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;

(13) appoint any special committees considered necessary; and

(14) perform ~~such~~ other duties as the members from time to time direct and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members."

Section 27. Section 32-3-414, MCA, is amended to read:

"32-3-414. Meeting of credit committee — loan approval. The credit committee shall meet as often as the business of the credit union requires ~~and not less frequently than once a month~~ to consider applications for loans. ~~No~~ A loan ~~shall~~ *may not* be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered. *However, credit union loan policies may provide that the credit committee may approve loans by category of size or type.*"

Section 28. Section 32-3-417, MCA, is amended to read:

~~32-3-417. Duties of supervisory committee or board Audits.~~ (1) The board of directors or supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. ~~† The board or committee shall make or cause to be made such any supplementary audits or examinations as it deems considers necessary or as are required by the director department of administration or by the board of directors and submit reports of these supplementary audits to the board of directors.~~

(2) The board of directors or supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time and not less frequently than every 2 years."

Section 29. Section 32-3-505, MCA, is amended to read:

~~32-3-505. Joint accounts.~~ (1) A member may designate any person or persons to hold shares and thrift club accounts with ~~him~~ the member in joint tenancy with the right of survivorship, as a tenant in common, or under any other form of multiple party account ownership permitted by law and allowed by the credit union. ~~but no~~ A joint tenant, unless a member in ~~his~~ the joint tenant's own right, ~~shall may not~~ be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee. *If a credit union allows more than one joint owner to seek credit union membership through a joint account, the joint account must contain a membership share for each joint owner seeking membership.*

(2) Payment of part or all of ~~such accounts~~ a joint account to any of the joint tenants owners ~~shall~~, to the extent of ~~such the~~ payment, ~~discharge discharges~~ the liability to all joint owners."

Section 30. Section 32-3-506, MCA, is amended to read:

~~32-3-506. Trust accounts Shares in trust.~~ (1) Shares may be issued in the name of a member in revocable trust for a beneficiary, including a minor, ~~but no~~ if the trustor is a member, or shares may be issued in the name of an irrevocable trust if either the trustor or the beneficiary is a member. A beneficiary, unless a member in ~~his~~ the beneficiary's own right, ~~shall may not~~ be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of ~~such the~~ shares described in subsection (1) to ~~such member shall~~ a trustee, to the extent of ~~such the~~ payment, ~~discharge discharges~~ the liability of the credit union to the ~~member trustee~~ and the beneficiary; and the credit union ~~shall be under no obligation~~ is not obligated to see to the application of ~~such the~~ payment.

(3) ~~In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written notice of the existence or terms of any trust, such shares and any dividends or interest thereon shall be paid to the beneficiary."~~

Section 31. Section 32-3-508, MCA, is amended to read:

~~32-3-508. Dormant accounts.~~ (1) If a credit union is unable to contact a member, beneficiary, or other person via first class mail at the last address shown on the records of the credit union and if such inability continues for a period of more than 5 years, all shares, accounts, dividends, interest, and other sums due or standing in the name of such member, beneficiary, or other person

~~may, by action of the board of directors, be segregated and thereafter no dividends or interest will accrue thereto.~~

~~(2) The member may reclaim any such sums by proper administrative or judicial proceedings or in accordance with the Uniform Disposition of Unclaimed Property Act provided for in Title 70, chapter 9, part 8.~~

~~(3) This section does not apply to shares, accounts, dividends, interest, and other sums due to or standing in the name of two or more persons unless the credit union is unable to contact any such persons in the manner and during the period specified in subsection (1)."~~

Section 32. Section 32-3-601, MCA, is amended to read:

"32-3-601. Loans — purposes, terms, and conditions. A credit union may loan to members for such purpose ~~the purposes and upon such security and terms as the credit committee, credit manager, or loan officer approves under the conditions as prescribed by the board of directors. The board of directors shall establish written policies with respect to granting loans and extending lines of credit. The policies must include terms, conditions, and acceptable forms of security.~~

Section 33. Section 32-3-602, MCA, is amended to read:

"32-3-602. Loan application. Every application for a loan must be made ~~in upon a form that the credit committee, credit manager, or loan officer prescribes prescribed by the credit union.~~ The application must state the security, if any, offered. Each loan must be evidenced by a written document or electronic data capable of being converted into written form."

Section 34. Section 32-3-604, MCA, is amended to read:

"32-3-604. Security. In addition to generally accepted types of security, the endorsement of a note by a surety, comaker, or guarantor; ~~or assignment pledge of shares or wages,~~ in a manner consistent with the laws of this state, ~~shall must~~ be ~~deemed~~ considered security within the meaning of this chapter. The adequacy of any security ~~shall be determined by the credit committee, credit manager, or loan officer,~~ is subject to this chapter and the ~~bylaws~~ *the lending policies established by the board of directors.*"

Section 35. Section 32-3-608, MCA, is amended to read:

"32-3-608. Loans to officials. (1) A credit union may make loans to its directors, employees, loan officers, and credit manager and to members of its supervisory and credit committees if:

(a) the loan complies with the requirements of this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers, *except that employees may receive low-interest or no-interest loans for job-related expenses under an employee assistance program approved by the department of administration;* and

(b) the loan or aggregate of loans to any one director or committee member that exceeds \$20,000 plus pledged shares must be reported to the board of directors. Loans to directors and committee members may not exceed an aggregate of 20% of unimpaired capital of the credit union.

(2) A credit union may permit directors, employees, loan officers, the credit manager, and members of its supervisory and credit committees to act as

comakers, guarantors, or endorsers of loans to other members, ~~except when~~ *If* the loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor, or endorser exceeds \$20,000, a report to the board of directors is required."

Section 36. Section 32-3-611, MCA, is amended to read:

"32-3-611. Share insurance. (1) Each credit union shall maintain insurance on its share accounts under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance plan approved by the commissioner of insurance and ~~the director of~~ the department of administration.

(2) A credit union may not begin operation or transact any business until proof that it has obtained insurance under the provisions of Title II of the Federal Credit Union Act or under an approved insurance plan has been furnished to the ~~director of the~~ department of administration.

(3) A credit union operating in violation of this section is subject to an order of suspension as provided for in 32-3-205.

(4) ~~The director of the~~ *Subject to the provisions of [section 11], the* department of administration shall make available reports of condition and examination reports to the ~~administrator of the~~ national credit union administration or any official of an insurance plan and may accept any report of examination made on behalf of ~~such administrators or officials~~ *the national credit union administration or insurance plan official.* The ~~director~~ department may appoint the ~~administrator of the~~ national credit union administration or any official of an insurance plan as liquidating agent of an insured credit union."

Section 37. Section 32-3-702, MCA, is amended to read:

"32-3-702. Makeup Maintenance of regular reserve account. ~~(1) The~~ *The* department of administration may require a credit union to establish and maintain, at a certain level, a regular reserve account as a contingency to address potential losses. *The department may rely on standards adopted by the national credit union administration in making any determination to require a credit union to establish a regular reserve account.*

~~Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:~~

~~(a) 10% of gross income until the regular reserve equals 5% of the total of outstanding loans and risk assets; then~~

~~(b) 7% of gross income until the regular reserve equals 6% of the total of outstanding loans and risk assets; then~~

~~(c) 5% of gross income until the regular reserve equals 7% of the total of outstanding loans and risk assets.~~

~~(2) Whenever the regular reserve falls below 7%, 6%, or 5% of the total outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of 5%, 6%, or 7%.~~

~~(3) Any entrance fees, charges, and transfer fees shall, after payment of organization expense, be added to the regular reserve."~~

Section 38. Section 32-3-703, MCA, is amended to read:

“32-3-703. Use of regular reserve account. The regular reserve *account* belongs to the credit union and must be used to meet losses including, with prior approval of the ~~director of the department of administration~~, losses from the sale of investments or securities. The regular reserve *account* may not be used to meet losses resulting from an excess of expenses over income and may not be distributed except on liquidation of the credit union or in accordance with a plan approved by the ~~director of the department of administration~~.”

Section 39. Section 32-3-705, MCA, is amended to read:

“32-3-705. Special reserves. In addition to the regular reserve *account*, special reserves to protect the interest of members must be established:

- (1) when required by regulation; or
- (2) when found by the board of directors of the credit union or by the ~~director of the department of administration~~ to be necessary.”

Section 40. Repealer. Section 32-3-704, MCA, is repealed.

Section 41. Codification instruction. [Sections 2, 3, and 9 through 11] are intended to be codified as an integral part of Title 32, chapter 3, and the provisions of Title 32, chapter 3, apply to [sections 2, 3, and 9 through 11].

Approved April 4, 2003

CHAPTER NO. 238

[HB 340]

AN ACT ALLOWING A GUARDIAN TO PROVIDE FOR FINAL DISPOSITION OF A WARD'S PHYSICAL REMAINS AND PERSONAL EFFECTS AFTER THE WARD'S DEATH, UPON ORDER OF A COURT; AMENDING SECTIONS 72-5-231, 72-5-233, 72-5-321, AND 72-5-324, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-5-231, MCA, is amended to read:

“72-5-231. Powers and duties of guardian of minor. Unless otherwise limited by the court, a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular and without qualifying the foregoing, a guardian has the following powers and duties:

- (1) The guardian shall take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.
- (2) The guardian may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship. The guardian also may receive money or property of the ward paid or delivered by virtue of 72-5-104. Any sums received must be applied to the ward's current needs for support, care, and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in

which case the excess must be paid at least annually to the conservator. Sums received by the guardian may not be used for compensation for the guardian's services except as approved by an order of the court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of the ward.

(4) A guardian shall report the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the minor's welfare or as required by court rule.

(5) *Upon the death of a guardian's ward, the guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition, including burial, entombment, or cremation, of the ward's physical remains and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death.*

Section 2. Section 72-5-233, MCA, is amended to read:

"72-5-233. Termination of appointment — how effected — certain liabilities and obligations not affected. (1) A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, *except as provided in subsection (2)*, adoption, marriage, or attainment of majority, but termination does not affect ~~his~~ a guardian's liability for prior acts or ~~his~~ a guardian's obligation to account for funds and assets of ~~his~~ the guardian's ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(2) *The guardian's authority and responsibility for a minor who dies while the minor is a ward of the guardian terminates when the guardian has completed arrangements for the final disposition of the ward's physical remains and personal effects as provided in 72-5-231(5).*

Section 3. Section 72-5-321, MCA, is amended to read:

"72-5-321. Powers and duties of guardian of incapacitated person. (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to ~~his~~ the guardian's possession and control, as required by the court or by court rule.

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting ~~his~~ the ward that a parent has respecting ~~his~~ an unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular

and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, ~~he~~ *the full guardian* is entitled to custody of the person of ~~his~~ *the* ward and may establish the ward's place of ~~abode~~ *residence* within or ~~without~~ *outside* of this state.

(b) If entitled to custody of ~~his~~ *the* ward, ~~he~~ *the full guardian* shall make provision for the care, comfort, and maintenance of ~~his~~ *the* ward and whenever appropriate arrange for ~~his~~ *the* ward's training and education. Without regard to custodial rights of the ward's person, ~~he~~ *the full guardian* shall take reasonable care of ~~his~~ *the* ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of ~~his~~ *the* ward is in need of protection.

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If ~~no~~ a conservator for the estate of the ward has *not* been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform ~~his~~ *that person's* duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward, ~~but he~~ *However, the full guardian* may not use funds from ~~his~~ *the* ward's estate for room and board ~~which he~~ *that the full guardian, his the full guardian's* spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. ~~He~~ *The full guardian* must exercise care to conserve any excess for the ward's needs.

(e) Unless waived by the court, a full guardian is required to report the condition of ~~his~~ *the* ward and of the estate which has been subject to ~~his~~ *the full guardian's* possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this ~~code~~ *chapter*, and the full guardian must account to the conservator for funds expended.

(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for ~~his~~ *the guardian's* failure to file a timely report.

(4) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which ~~he~~ *the limited guardian* is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for ~~his~~ *the guardian's* services and for room and board furnished to the ward as agreed upon between ~~him~~ *the guardian* and the conservator, provided the amounts agreed upon are

reasonable under the circumstances. The full guardian or limited guardian authorized to oversee ~~such aspects of~~ the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(5) ~~No~~ A full guardian or limited guardian may *not* involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is ~~himself~~ unwilling or unable to give informed consent to ~~such~~ commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.

(6) *Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition of the ward's physical remains, including burial, entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death.*

Section 4. Section 72-5-324, MCA, is amended to read:

"72-5-324. Termination of appointment — how effected — certain liabilities and obligations not affected. (1) (a) ~~The~~ Except as provided in subsection (1)(b), the authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in 72-5-325. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(b) *The guardian's authority and responsibility for an incapacitated person, who dies while the person is a ward of the guardian, terminates when the guardian has completed arrangements for the final disposition of the ward's physical remains and personal effects, as provided in 72-5-321(6).*

(2) Termination does not affect ~~his~~ the guardian's liability for prior acts ~~nor~~ ~~his~~ or the guardian's obligation to account for funds and assets of ~~his~~ the ward."

Approved April 4, 2003

CHAPTER NO. 239

[HB 554]

AN ACT REVISING THE CRITERIA FOR AWARDING RECLAMATION GRANTS AND LOANS; TEMPORARILY REMOVING PRIORITIES FOR ABANDONED MINE PROJECTS AND REDUCING PRIORITIES FOR OIL AND GAS PROJECTS; AMENDING SECTION 90-2-1113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-2-1113, MCA, is amended to read:

"90-2-1113. Evaluation criteria — priority. (1) ~~Except as provided in subsections (2) and (3), the~~ (1) Except as provided in subsection (2), the

department shall consider the following criteria in evaluating eligible applications and in selecting projects to be recommended to the governor for funding:

- (a) the degree to which the project will provide benefits in its eligibility category or categories;
- (b) the degree to which the project will provide public benefits;
- (c) the degree to which the project will promote, enhance, or advance the policies and purposes of the reclamation and development grants program;
- (d) the degree to which the project will provide for the conservation of natural resources;
- (e) the degree of need and urgency for the project;
- (f) the extent to which the project sponsor or local entity is contributing to the costs of the project or is generating additional nonstate funds;
- (g) the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and
- (h) any other criteria that the department considers necessary to carry out the policies and purposes of the reclamation and development grants program.

~~(2) (a) Subject to the conditions of this part, the department shall give priority to grant requests, not to exceed a total of \$600,000 for the biennium, from the board of oil and gas conservation. The board of oil and gas conservation shall use a grant that received priority under this subsection (2)(a) for oil and gas reclamation projects. The board may use a maximum of 2.5% of the amount of a grant for administrative costs associated with implementing the projects covered in the grant.~~

~~(b) Any unobligated fund balance of a grant that received priority under subsection (2)(a) remaining at the end of the current biennium must be included as part of the \$600,000 limitation for the next biennium.~~

~~(c) The priority given to the board of oil and gas conservation under subsection (2)(a) does not preclude the board of oil and gas conservation from submitting additional grant requests. The department shall evaluate additional grant requests from the board of oil and gas conservation in accordance with the provisions of subsection (1).~~

~~(3) Subject to the conditions of this part, the department shall give priority to grant requests not to exceed a total of \$800,000 for the biennium for abandoned mine reclamation projects. A grant may not be used for personnel costs or general operating expenses.~~

(2) (a) Subject to the conditions of this part, the department shall give priority to grant requests, not to exceed a total of \$200,000 for the biennium, from the board of oil and gas conservation. The board of oil and gas conservation shall use a grant that received priority under this subsection (2)(a) for oil and gas reclamation projects. The board may use a maximum of 2.5% of the amount of a grant for administrative costs associated with implementing the projects covered in the grant.

(b) Any unobligated fund balance of a grant that received priority under subsection (2)(a) remaining at the end of the current biennium must be included as part of the \$600,000 limitation for the next biennium.

(c) *The priority given to the board of oil and gas conservation under subsection (2)(a) does not preclude the board of oil and gas conservation from submitting additional grant requests. The department shall evaluate additional grant requests from the board of oil and gas conservation in accordance with the provisions of subsection (1).*"

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates June 30, 2005.

Approved April 7, 2003

CHAPTER NO. 240

[HB 585]

AN ACT RELATING TO ADVANCED PRACTICE REGISTERED NURSING; PROVIDING FOR ATTENDING ADVANCED PRACTICE REGISTERED NURSES TO BE RECOGNIZED AS HEALTH CARE PROVIDERS WITH THE AUTHORITY TO FOLLOW A LIVING WILL PROTOCOL AND A DO NOT RESUSCITATE PROTOCOL; AND AMENDING SECTIONS 50-9-102, 50-9-103, 50-9-104, 50-9-105, 50-9-106, 50-9-107, 50-9-201, 50-9-202, 50-9-203, 50-9-204, 50-9-205, 50-9-206, 50-10-101, 50-10-102, 50-10-103, 50-10-104, AND 50-10-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-9-102, MCA, is amended to read:

"50-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) *"Advanced practice registered nurse" means an individual licensed under Title 37, chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409.*

(2) *"Attending advanced practice registered nurse" means the advanced practice registered nurse who is selected by or assigned to the patient and who has primary responsibility for the treatment and care of the patient.*

~~(1)~~(3) *"Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.*

~~(2)~~(4) *"Board" means the Montana state board of medical examiners.*

~~(3)~~(5) *"Declaration" means a document executed in accordance with the requirements of 50-9-103.*

~~(4)~~(6) *"Department" means the department of public health and human services provided for in 2-15-2201.*

~~(5)~~(7) *"Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.*

~~(6)~~(8) *"Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or practice of a profession.*

~~(7)~~(9) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, serves only to prolong the dying process.

~~(8)~~(10) "Living will protocol" means a locally developed, community-wide method or a standardized, statewide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel.

~~(9)~~(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

~~(10)~~(12) "Physician" means an individual licensed under Title 37, chapter 3, to practice medicine in this state.

~~(11)~~(13) "Qualified patient" means a patient 18 years of age or older who has executed a declaration in accordance with this chapter and who has been determined by the attending physician *or attending advanced practice registered nurse* to be in a terminal condition.

~~(12)~~(14) "Reliable documentation" means a standardized, statewide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

~~(13)~~(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

~~(14)~~(16) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician *or attending advanced practice registered nurse*, result in death within a relatively short time."

Section 2. Section 50-9-103, MCA, is amended to read:

"50-9-103. Declaration relating to use of life-sustaining treatment — designee. (1) An individual of sound mind and 18 ~~or more~~ years of age *or older* may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declarant may designate another individual of sound mind and 18 ~~or more~~ years of age *or older* to make decisions governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant, ~~or another at the declarant's direction,~~ and *must be* witnessed by two individuals. A ~~physician or~~ health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

(2) A declaration directing a physician *or advanced practice registered nurse* to withhold or withdraw life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician *or attending advanced practice registered nurse*, cause my death within a relatively short time and I am no longer able to make decisions

regarding my medical treatment, I direct my attending physician *or attending advanced practice registered nurse*, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.

Signed this day of,

Signature

City, County, and State of Residence.....

The declarant voluntarily signed this document in my presence.

Witness

Address

Witness

Address

(3) A declaration that designates another individual to make decisions governing the withholding or withdrawal of life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician *or attending advanced practice registered nurse*, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I appoint or, if he or she is not reasonably available or is unwilling to serve,, to make decisions on my behalf regarding withholding or withdrawal of treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain, pursuant to the Montana Rights of the Terminally Ill Act.

If the individual I have appointed is not reasonably available or is unwilling to serve, I direct my attending physician *or attending advanced practice registered nurse*, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain.

Signed this day of,

Signature

City, County, and State of Residence.....

The declarant voluntarily signed this document in my presence.

Witness

Address

Witness

Address

Name and address of designee.

Name

Address

(4) If the designation of an attorney-in-fact pursuant to 72-5-501 and 72-5-502, or the judicial appointment of an individual, contains written authorization to make decisions regarding the withholding or withdrawal of

life-sustaining treatment, that designation or appointment constitutes, for the purposes of this part, a declaration designating another individual to act for the declarant pursuant to subsection (1).

(5) A ~~physician or other~~ health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, ~~promptly so~~ shall advise the declarant and any individual designated to act for the declarant *promptly*."

Section 3. Section 50-9-104, MCA, is amended to read:

"50-9-104. Revocation of declaration. (1) A declarant may revoke a declaration at any time and in any manner, without regard to mental or physical condition. A revocation is effective upon its communication to the attending physician, *attending advanced practice registered nurse*, or other health care provider by the declarant or a witness to the revocation. A health care provider or emergency medical services personnel witnessing a revocation shall act upon the revocation and shall communicate the revocation to the attending physician *or attending advanced practice registered nurse* at the earliest opportunity. A revocation communicated to a person other than the attending physician, *attending advanced practice registered nurse*, emergency medical services personnel, or a health care provider is not effective unless the attending physician *or attending advanced practice registered nurse* is informed of it before the qualified patient is in need of life-sustaining treatment.

(2) The attending physician, *attending advanced practice registered nurse*, or other health care provider shall make the revocation a part of the declarant's medical record."

Section 4. Section 50-9-105, MCA, is amended to read:

"50-9-105. When declaration operative. (1) A declaration becomes operative when:

(a) it is communicated to the attending physician *or attending advanced practice registered nurse*; and

(b) the declarant is determined by the attending physician *or attending advanced practice registered nurse* to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment.

(2) When the declaration becomes operative, the attending physician *or attending advanced practice registered nurse* and other health care providers shall act in accordance with its provisions and with the instructions of a designee under 50-9-103(1) or comply with the transfer requirements of 50-9-203."

Section 5. Section 50-9-106, MCA, is amended to read:

"50-9-106. Consent by others to withholding or withdrawal of treatment. (1) If a written consent to the withholding or withdrawal of the treatment, witnessed by two individuals, is given to the attending physician *or attending advanced practice registered nurse*, the attending physician *or attending advanced practice registered nurse* may withhold or withdraw life-sustaining treatment from an individual who:

(a) has been determined by the attending physician *or attending advanced practice registered nurse* to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment; and

(b) has no effective declaration.

(2) The authority to consent or to withhold consent under subsection (1) may be exercised by the following individuals, in order of priority:

- (a) the spouse of the individual;
- (b) an adult child of the individual or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;
- (c) the parents of the individual;
- (d) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or
- (e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation.

(3) If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division in a class does not authorize the next class to decide.

(4) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.

(5) A decision of the attending physician *or attending advanced practice registered nurse* acting in good faith that a consent is valid or invalid is conclusive.

(6) Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual known to the attending physician *or attending advanced practice registered nurse* to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.”

Section 6. Section 50-9-107, MCA, is amended to read:

“50-9-107. When health care provider may presume validity of declaration. In the absence of knowledge to the contrary, a ~~physician or other~~ health care provider may assume that a declaration complies with this chapter and is valid.”

Section 7. Section 50-9-201, MCA, is amended to read:

“50-9-201. Recording determination of terminal condition and content of declaration. Upon determining that a declarant is in a terminal condition, the attending physician *or attending advanced practice registered nurse* who knows of a declaration shall record that determination and the terms of the declaration in the declarant’s medical record.”

Section 8. Section 50-9-202, MCA, is amended to read:

“50-9-202. Treatment of qualified patients. (1) A qualified patient may make decisions regarding life-sustaining treatment so long as the patient is able to do so.

(2) This chapter does not affect the responsibility of the attending physician, *attending advanced practice registered nurse*, or other health care provider to provide treatment, including nutrition and hydration, for a patient’s comfort care or alleviation of pain.

(3) Life-sustaining treatment cannot be withheld or withdrawn pursuant to a declaration from an individual known to the attending physician *or attending advanced practice registered nurse* to be pregnant so long as it is probable that

the fetus will develop to the point of live birth with continued application of life-sustaining treatment.”

Section 9. Section 50-9-203, MCA, is amended to read:

“50-9-203. Transfer of patients. An attending physician, *attending advanced practice registered nurse*, or other health care provider who is unwilling to comply with this chapter shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician, *advanced practice registered nurse*, or health care provider who is willing to do so. If the policies of a health care facility preclude compliance with the declaration of a qualified patient under this chapter, that facility shall take all reasonable steps to transfer the patient to a facility in which the provisions of this chapter can be carried out.”

Section 10. Section 50-9-204, MCA, is amended to read:

“50-9-204. Immunities. (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician *or advanced practice registered nurse* who causes the withholding or withdrawal of life-sustaining treatment from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining treatment under the direction or with the authorization of a physician *or advanced practice registered nurse*;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining treatment under the direction of or with the authorization of a physician *or advanced practice registered nurse* or who on receipt of reliable documentation follow a living will protocol;

(d) emergency medical services personnel who proceed to provide life-sustaining treatment to a qualified patient pursuant to a revocation communicated to them; and

(e) a health care facility in which withholding or withdrawal occurs.

(2) A ~~physician or other~~ health care provider whose action under this chapter is in accord with reasonable medical standards is not subject to civil or criminal liability or discipline for unprofessional conduct with respect to that decision.

(3) A ~~physician or other~~ health care provider whose decision about the validity of consent under 50-9-106 is made in good faith is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision.

(4) An individual designated pursuant to 50-9-103(1) or an individual authorized to consent pursuant to 50-9-106, whose decision is made or consent is given in good faith pursuant to this chapter, is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision.”

Section 11. Section 50-9-205, MCA, is amended to read:

“50-9-205. Effect on insurance — patient’s decision. (1) Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to 50-9-103 does not affect the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated by the withholding or withdrawal of life-sustaining treatment from an insured, notwithstanding any term of the policy to the contrary.

(3) A person may not prohibit or require the execution of a declaration as a condition for being insured for or receiving health care services.

(4) This chapter ~~creates no~~ *does not create* a presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition.

(5) This chapter does not affect the right of a patient to make decisions regarding use of life-sustaining treatment, so long as the patient is able to do so, or impair or supersede a right or responsibility that any person has to effect the withholding or withdrawal of medical care.

(6) This chapter does not require a ~~physician or other~~ health care provider to take action contrary to reasonable medical standards.

(7) This chapter does not condone, authorize, or approve mercy killing or euthanasia.”

Section 12. Section 50-9-206, MCA, is amended to read:

“50-9-206. Penalties. (1) A ~~physician or other~~ health care provider who willfully fails to transfer the care of a patient in accordance with 50-9-203 is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A physician *or advanced practice registered nurse* who willfully fails to record the determination of terminal condition or the terms of a declaration in accordance with 50-9-201 is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) An individual who purposely conceals, cancels, defaces, or obliterates the declaration of another without the declarant’s consent or who falsifies or forges a revocation of the declaration of another is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(4) An individual who falsifies or forges the declaration of another individual or purposely conceals or withholds personal knowledge of a revocation as provided in 50-9-104 is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(5) A person who requires or prohibits the execution of a declaration as a condition for being insured for or receiving health care service is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(6) A person who coerces or fraudulently induces an individual to execute a declaration is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(7) The penalties provided in this section do not displace any sanction applicable under other law.”

Section 13. Section 50-10-101, MCA, is amended to read:

“50-10-101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) *“Advanced practice registered nurse” means an individual licensed under Title 37, chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409.*

(2) *“Attending advanced practice registered nurse” means the advanced practice registered nurse who is selected by or assigned to the patient and who has primary responsibility for the treatment and care of the patient.*

~~(3)~~(3) *“Attending physician” has the meaning provided in 50-9-102.*

~~(4)~~(4) *“Board” means the state board of medical examiners.*

~~(5)~~(5) *“Department” means the department of public health and human services provided for in 2-15-2201.*

~~(6)~~(6) *“DNR identification” means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor is a qualified patient, as defined in 50-9-102, or that the possessor’s attending physician or attending advanced practice registered nurse has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor’s medical file.*

~~(7)~~(7) *“Do not resuscitate order” means a directive from a licensed physician or advanced practice registered nurse that emergency life-sustaining procedures should not be administered to a particular person.*

~~(8)~~(8) *“Do not resuscitate protocol” means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians, advanced practice registered nurses, and emergency medical services personnel.*

~~(9)~~(9) *“Emergency medical services personnel” has the meaning provided in 50-9-102.*

~~(10)~~(10) *“Health care facility” has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.*

~~(11)~~(11) *“Life-sustaining procedure” means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.*

~~(12)~~(12) *“Physician” means a person licensed under Title 37, chapter 3, to practice medicine in this state.”*

Section 14. Section 50-10-102, MCA, is amended to read:

“50-10-102. Immunities. (1) The following are not subject to civil or criminal liability and are not guilty of unprofessional conduct upon discovery of DNR identification upon a person:

(a) a physician or advanced practice registered nurse who causes the withholding or withdrawal of life-sustaining procedures from that person;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician or an advanced practice registered nurse;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures from that person;

(d) a health care facility in which withholding or withdrawal of life-sustaining procedures from that person occurs;

(e) physicians, *advanced practice registered nurses*, persons under the direction or authorization of a physician *or an advanced practice registered nurse*, emergency medical services personnel, or health care facilities that provide life-sustaining procedures pursuant to an oral or written request communicated to them by a person who possesses DNR identification.

(2) The provisions of subsections (1)(a) through (1)(d) apply when a life-sustaining procedure is withheld or withdrawn in accordance with the do not resuscitate protocol.

(3) Emergency medical services personnel who follow a do not resuscitate order from a licensed physician *or advanced practice registered nurse* are not subject to civil or criminal liability and are not guilty of unprofessional conduct.”

Section 15. Section 50-10-103, MCA, is amended to read:

“50-10-103. Adherence to do not resuscitate protocol — transfer of patients. (1) Emergency medical services personnel, other than physicians *or advanced practice registered nurses*, shall comply with the do not resuscitate protocol when presented with either do not resuscitate identification, an oral do not resuscitate order issued directly by a physician *or an advanced practice registered nurse*, or a written do not resuscitate order entered on a form prescribed by the department.

(2) An attending physician, *an attending advanced practice registered nurse*, or a health care facility unwilling or unable to comply with the do not resuscitate protocol shall take all reasonable steps to transfer a person possessing DNR identification to another physician *or advanced practice registered nurse* or to a health care facility in which the do not resuscitate protocol will be followed.”

Section 16. Section 50-10-104, MCA, is amended to read:

“50-10-104. Effect on insurance — patient’s decision. (1) Death resulting from the withholding or withdrawal of emergency life-sustaining procedures pursuant to the do not resuscitate protocol and in accordance with this part is not, for any purpose, a suicide or homicide.

(2) The possession of DNR identification pursuant to this part does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of emergency life-sustaining procedures from an insured person possessing DNR identification, notwithstanding any term of the policy to the contrary.

(3) A physician, *advanced practice registered nurse*, health care facility, or other health care provider and a health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may not require a person to possess DNR identification as a condition for being insured for or receiving health care services.

(4) This part does not create a presumption concerning the intention of an individual who does not possess DNR identification with respect to the use, withholding, or withdrawal of emergency life-sustaining procedures.

(5) This part does not increase or decrease the right of a patient to make decisions regarding the use of emergency life-sustaining procedures if the patient is able to do so, nor does this part impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this part are cumulative.

(6) This part does not authorize or approve mercy killing.”

Section 17. Section 50-10-106, MCA, is amended to read:

“50-10-106. Penalties. (1) A physician *or advanced practice registered nurse* who willfully fails to transfer a patient in accordance with 50-10-103 is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A person who purposely conceals, cancels, defaces, or obliterates the DNR identification of another without the consent of the possessor or who falsifies or forges a revocation of the DNR identification of another is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) A person who falsifies or forges the DNR identification of another or purposely conceals or withholds personal knowledge of a revocation of DNR identification with the intent to cause the use, withholding, or withdrawal of life-sustaining procedures is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.”

Approved April 7, 2003

CHAPTER NO. 241

[HB 627]

AN ACT REVISING THE DEFINITION OF “COST” WHEN APPLIED TO PROPERTY TAX LIEN PURCHASES AND THE TAX DEED PROCESS; ALLOWING THE RECOVERY OF CERTAIN COSTS REQUIRED BY LAW THAT ARE INCURRED BY A PURCHASER OF A PROPERTY TAX LIEN; REQUIRING TIMELY SUBMISSION OF RECEIPTS TO THE COUNTY TREASURER FOR CERTAIN CLAIMED COSTS; AND AMENDING SECTION 15-17-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-17-121, MCA, is amended to read:

“15-17-121. Definitions. Except as otherwise specifically provided, when terms mentioned in Title 15, chapters 17 and 18, are used in connection with taxation, they are defined in the following manner:

(1) “Certificate” or “tax sale certificate” means the document described in 15-17-212.

(2) (a) “Cost” means the cost incurred by the county as a result of a taxpayer’s failure to pay taxes when due. It includes but is not limited to any actual out-of-pocket expenses incurred by the county plus the administrative cost of:

- (i) preparing the list of delinquent taxes;
- (ii) preparing the notice of pending tax sale;

- (iii) conducting the tax sale;
- (iv) assigning the county's interest in a tax lien to a third party;
- (v) identifying interested persons entitled to notice of the pending issuance of a tax deed;
- (vi) notifying interested persons;
- (vii) issuing the tax deed; and
- (viii) any other administrative task associated with accounting for or collecting delinquent taxes.

(b) ~~Cost does not include the~~ *The term includes receipted costs that are required by law and incurred by the owner purchaser of a property tax lien other than the county.*

(c) *The term does not include interest for payments for the following:*

- (i) *postage for certified mailings and certified mailings with return receipt requested;*
- (ii) *a title search, to the extent necessary to identify interested persons entitled to notice of the pending issuance of a tax deed;*
- (iii) *publishing costs for required publications; and*
- (iv) *filing costs for proof of notice.*

(d) The purchaser of the property tax lien shall provide receipts to the county treasurer upon issuance of a tax sale certificate as required in 15-17-212 and notification that a tax deed may be issued as required by 15-18-212 and 15-18-216.

(3) "County" means any county government and includes those classified as consolidated governments.

(4) "Property tax lien" means a lien acquired by the payment at a tax sale of all outstanding delinquent taxes, including penalties, interest, and costs.

(5) "Purchaser" means any person, other than the person to whom the property is assessed, who pays at the tax sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser.

(6) "Tax", "taxes", or "property taxes" means all ad valorem property taxes, property assessments, fees related to property, and assessments for special improvement districts and rural special improvement districts.

(7) "Tax sale" means:

(a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax lien representing delinquent taxes, including penalties, interest, and costs; and

(b) with respect to personal property, the offering for sale by the county treasurer of personal property on which the taxes are delinquent or other personal property on which the delinquent taxes are a lien."

Approved April 4, 2003

CHAPTER NO. 242

[SB 206]

AN ACT REVISING THE BOND RELEASE PROVISIONS FOR TIMBER SLASH FIRE HAZARD REDUCTION AGREEMENTS; AMENDING SECTION 76-13-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-408, MCA, is amended to read:

“76-13-408. Fire hazard reduction agreement and bond — bond release and penalty — exemption. (1) Before cutting any forest product, constructing or reconstructing any road in contemplation of cutting any forest product, or conducting timber stand improvement, such as but not limited to precommercial thinning, weeding, or pruning, upon private forest lands within the state, the person conducting the work must be issued an exemption certificate by the department or shall provide for the reduction or management of the fire hazard to be created, except where a minimum slash hazard would exist, by entering into a fire hazard reduction agreement or a master fire hazard reduction agreement with the department, providing for the full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted under this part.

(2) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall post a bond to the state in a form and for an amount ~~as may be~~ prescribed by the department, but the amount may not exceed \$6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut. Bond amounts for master fire hazard reduction agreements are calculated to cover the potential cost to the department for fire hazard abatement in case of default and are based on the average annual volume of uncompleted abatement. Master fire hazard reduction agreement bonds are to be administered as nonsite-specific umbrella bonds, for which the entire bond or any portion of the bond may be collected to pay for unabated fire hazards ~~on any or all sites covered~~ by the bond. The department shall review master fire hazard reduction agreement bond amounts at least annually. The bonds must be adjusted according to the volume of timber harvested and the level of compliance of the bond provider.

(3) The agreement must provide that:

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted under this part.

(4) The bond must be released upon the issuance of the certificate of clearance. At the request of the fire hazard reduction agreement holder, cash bonds for fire hazard reduction agreements exceeding 200,000 board feet, or the equivalent, must be partially released upon satisfactory completion of slash piling if the fire hazard reduction agreement holder has a record of compliance with the provisions of 76-13-407 or this section. The department may inspect the sites for which release or partial release is being requested, or it may rely on the submittal of a signed affidavit ~~and relevant site photographs~~ provided by the

person posting the bond. A person that submits a fraudulent affidavit ~~or~~ ~~photographs~~ is subject to the penalty provisions of 45-7-202, may have other fire hazard reduction agreements revoked, or may be denied the issuance of fire hazard reduction agreements in the future.

(5) If a minimum slash hazard will be created, the activity is exempt from the provisions of this part.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2003

CHAPTER NO. 243

[HB 196]

AN ACT COMBINING THE BOARD OF BARBERS WITH THE BOARD OF COSMETOLOGISTS; ESTABLISHING THE COMPOSITION AND QUALIFICATION OF MEMBERS ON THE COMBINED BOARD OF BARBERS AND COSMETOLOGISTS AND PROVIDING FOR 5-YEAR STAGGERED TERMS FOR THE MEMBERS; SUBSTITUTING THE TERM “SALON OR SHOP” FOR “COSMETOLOGY SALON” AND “BARBERSHOP”; PROVIDING A PURPOSE STATEMENT FOR BARBERING AND COSMETOLOGY DISCIPLINES REGULATED UNDER TITLE 37, CHAPTER 31, MCA; REVISING DEFINITIONS IN TITLE 37, CHAPTER 31, MCA, TO BE CONSISTENT WITH THE COMBINED BOARD; EXPANDING RULEMAKING AUTHORITY TO PROVIDE FOR THE COMBINED BOARD; REVISING PROHIBITED ACTS, LICENSING REQUIREMENTS, AND TEACHING LICENSE REQUIREMENTS TO REFLECT THE COMBINED BOARD; REDUCING THE HOURS OF STUDY FOR A BARBER'S LICENSE FROM 2,000 HOURS TO 1,500 HOURS; PROVIDING RECIPROCITY FOR OUT-OF-STATE BARBERS; REVISING SCHOOL CERTIFICATION AND INSPECTION REQUIREMENTS TO REFLECT THE COMBINED BOARD; ALLOWING USE OF A THIRD PARTY TO PROVIDE EXAMINATION SERVICES; REVISING FEE PROVISIONS AND LICENSE DENIAL, REVOCATION, AND SUSPENSION PROVISIONS TO REFLECT THE COMBINED BOARD; MOVING ELECTROLOGY PROVISIONS FROM TITLE 37, CHAPTER 32, MCA, TO TITLE 37, CHAPTER 31, MCA; AMENDING SECTIONS 2-15-1747, 15-30-256, 37-20-303, 37-31-101, 37-31-102, 37-31-203, 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-321, 37-31-322, 37-31-323, 37-31-331, 39-51-204, 49-2-101, AND 50-61-103, MCA; AND REPEALING SECTIONS 2-15-1746, 37-30-101, 37-30-201, 37-30-202, 37-30-203, 37-30-301, 37-30-303, 37-30-305, 37-30-307, 37-30-308, 37-30-310, 37-30-311, 37-30-401, 37-30-402, 37-30-403, 37-30-404, 37-30-405, 37-30-406, 37-30-407, 37-30-411, 37-30-412, 37-30-413, 37-30-421, 37-30-422, 37-30-423, 37-30-424, 37-30-501, 37-32-101, 37-32-102, 37-32-103, 37-32-201, 37-32-301, 37-32-302, 37-32-304, 37-32-305, 37-32-306, AND 37-32-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1747, MCA, is amended to read:

“2-15-1747. Board of barbers and cosmetologists. (1) There is a board of barbers and cosmetologists.

(2) ~~(a)~~ The board consists of ~~seven~~ *nine* members appointed by the governor with the consent of the senate and ~~may~~ must include:

~~(i)~~ (a) three licensed cosmetologists each of whom has been a resident of this state for a least 5 years and has been actively engaged in the profession of cosmetology for at least 5 years immediately prior to being appointed to the board;

(b) one member who has been a resident of this state for at least 5 years and who has been actively engaged as a licensed electrologist, esthetician, or manicurist for at least 5 years immediately prior to being appointed to the board;

~~(ii) one licensed manicurist or licensed electrologist;~~

~~(iii) two persons who are members of or affiliated with a school of cosmetology; and~~

~~(iv) one public member who is not engaged in the practice of cosmetology, electrology, or manicuring.~~

~~(b) Members are appointed by the governor with the consent of the senate~~

(c) three licensed barbers each of whom has been a resident of this state for at least 5 years and has been actively engaged in the profession of barbering for at least 5 years immediately prior to appointment to the board; and

(d) two members of the public who are not engaged in the practice of barbering, cosmetology, electrology, esthetics, or manicuring.

~~(3) Each licensed member appointed shall have actively engaged in the profession of cosmetology, manicuring, or electrology for at least 5 years before his appointment and have been a resident of this state for at least 5 years immediately before his appointment. Each member shall be at least 18 years old and a graduate of a high school or its equivalent. No Not more than two members of the board may be members of or affiliated with a school of cosmetology.~~

(4) (a) If there is not a licensed barber qualified and willing to serve on the board in one of the three barber positions, the governor may appoint a cosmetologist, electrologist, esthetician, or manicurist otherwise qualified under this section to fill the position.

(b) If there is not a licensed cosmetologist qualified and willing to serve on the board in one of the three cosmetologist positions, the governor may appoint a barber, electrologist, esthetician, or manicurist otherwise qualified under this section to fill the position.

~~(4)(5)~~ Each member shall serve for a term of 4 5 years. The terms must be staggered.

~~(5)(6)~~ The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 15-30-256, MCA, is amended to read:

"15-30-256. Employment defined and exclusions from definition of employment. (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by an employee for an employer.

(2) The term "employment" does not include:

(a) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 15-30-201(4)(c);

(b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom an exemption may be claimed by the employer under the Internal Revenue Code or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor pursuant to 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has previously acknowledged or acknowledges in writing that the person performing the service and the service are not covered for unemployment insurance purposes. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

(e) service performed by a cosmetologist *or barber* who is licensed under Title 37, chapter 31, ~~or a barber who is licensed under Title 37, chapter 30~~, and:

(i) who has acknowledged in writing that the cosmetologist or barber working under contract is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a ~~cosmetology~~ salon *or shop*, as defined in 37-31-101, ~~or a barbershop, as defined in 37-30-101~~, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the ~~cosmetology~~ salon *or barbershop shop* may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership or a limited liability partnership, or members of a member-managed limited liability company that has filed articles of organization with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

- (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- (iii) may perform service for anyone without limitation;
- (iv) may accept or reject any job;
- (v) furnishes substantially all tools and equipment necessary to provide the service; and
- (vi) works under a written contract that:
 - (A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;
 - (B) states that the installer is not covered by unemployment insurance; and
 - (C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;
- (i) service performed by a direct seller as defined by 26 U.S.C. 3508;
- (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:
 - (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;
 - (ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and
 - (iii) performs all service as an independent contractor pursuant to a written contract.
- (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- (l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;
- (m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training;
- (n) service performed by an inmate of a state prison or other state correctional or custodial institution;
- (o) service by an individual who is sentenced to perform court-ordered community service or similar work;
- (p) service performed for aid or sustenance only;
- (q) active service as members of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);
- (r) agricultural labor; or
- (s) service performed by an independent contractor."

Section 3. Purpose. It is a matter of legislative policy in the state of Montana that the practice of barbering, cosmetology, electrology, esthetics, and manicuring affects the public health, safety, and welfare and is subject to regulation and control in order to protect the public from unauthorized and unqualified practice.

Section 4. Section 37-20-303, MCA, is amended to read:

“37-20-303. Exemptions from approval requirement. This chapter does not require the approval of a physician assistant-certified utilization plan or locum tenens utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapters 3 through 17, ~~or 31, or 32.~~”

Section 5. Section 37-31-101, MCA, is amended to read:

“37-31-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Board” means the board of *barbers and* cosmetologists provided for in 2-15-1747.

(2) “Booth” means any part of a ~~cosmetology, manicuring, or esthetics~~ salon or *shop* that is rented or leased for the performance of ~~cosmetologist, barbering, cosmetology, electrology, esthetics, or manicuring, or esthetics~~ services, as specified in 39-51-204(1)(e).

(3) ~~“Cosmetology salon” means the premises, a building, or a part of a building in which a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist is practiced by a person licensed under the provisions of this chapter.~~

(4)(3) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) (a) “Electrology” means *the study of and the professional practice of permanently removing superfluous hair by destroying the hair roots through passage of an electric current with an electrified needle. Electrology includes electrolysis and thermolysis. Electrology may include the use of waxes for epilation and the use of chemical depilatories.*

(b) *Electrology does not include pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.*

(5) “Esthetician” means a person licensed under this chapter to engage in the practice of esthetics.

(6) “Esthetics” means skin care of the ~~face, neck, and hands~~ *body*, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.

(7) ~~“Esthetics salon” means the premises, a building, or a part of a building in which the art of esthetics is practiced.~~

(8)(7) “Manicuring” includes ~~nail care of the hands and feet~~ *care of the nails, the hands, the lower arms, the feet, and the lower legs* and the application and maintenance of artificial nails.

(9) ~~“Manicuring salon” means the premises, a building, or a part of a building in which the art of manicuring is practiced.~~

(8) "Practice or teaching of barbering" means any of the following practices performed for payment, either directly or indirectly, upon the human body for tonsorial purposes and not performed for the treatment of disease or physical or mental ailments:

- (a) shaving or trimming a beard;
 - (b) cutting, styling, coloring, or waving hair;
 - (c) straightening hair by the use of chemicals;
 - (d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or mechanical appliance;
 - (e) shampooing hair, applying hair tonic, or bleaching or highlighting hair;
- or
- (f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

~~(10)~~ (9) (a) "Practice and or teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" and performed in ~~cosmetology~~ salons or shops, in booths, or by itinerant cosmetologists when the work is done for the embellishment, cleanliness, and beautification of the hair, ~~scalp, face, arms, feet, or hands and body.~~

(b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business.

(10) "Salon or shop" means the physical location in which a person licensed under this chapter practices barbering, cosmetology, electrology, esthetics, or manicuring.

(11) "School" means a program and location approved by the board with respect to its course of instruction for training persons in barbering, cosmetology, electrology, esthetics, or manicuring and that meets any other criteria established by the board."

Section 6. Section 37-31-102, MCA, is amended to read:

"37-31-102. Exemptions. ~~Nothing in~~ The provisions of this chapter ~~prohibits~~ do not prohibit:

- (1) service in case of emergency or domestic administration without compensation; or
- (2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; ~~or~~
- (3) ~~services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair."~~

Section 7. Section 37-31-203, MCA, is amended to read:

"37-31-203. Rulemaking powers. The board shall prescribe rules for:

- (1) the conduct of its business;
- (2) the qualification, examination, and registration of applicants to practice ~~barbering, cosmetology, electrology, esthetics, or manicuring, or esthetics~~ or to teach ~~barbering, cosmetology, electrology, esthetics, or manicuring, or esthetics;~~
- (3) ~~the qualification and registration of applicants for manager-operator licenses;~~

- ~~(4)~~(3) the regulation and instruction of apprentices and students;
- ~~(5)~~(4) the conduct of schools of *barbering*, cosmetology, *electrology*, *esthetics*, and manicuring, ~~and esthetics~~ for apprentices and students;
- ~~(6)~~(5) the qualification and registration of applicants for booth rental licenses; and
- ~~(7)~~(6) generally the conduct of the persons, firms, or corporations affected by this chapter."

Section 8. Section 37-31-301, MCA, is amended to read:

"37-31-301. Prohibited acts. (1) Without an appropriate license issued under this chapter, it is unlawful to:

- (a) practice *barbering*, cosmetology, *electrology*, *esthetics*, or *manicuring* for compensation;
- (b) own, manage, operate, or conduct a school of *barbering*, cosmetology, *electrology*, *esthetics*, or manicuring, ~~or esthetics~~;
- (c) manage or operate a ~~cosmetology salon, manicuring salon, esthetics salon or shop~~; or a booth; or
- (d) teach in a school of *barbering*, cosmetology, *electrology*, *esthetics*, or manicuring, ~~or esthetics~~;
- ~~(e) practice manicuring for compensation;~~
- ~~(f) practice as a finger waver; or~~
- ~~(g) practice esthetics for compensation.~~

(2) It is unlawful:

- (a) for a person who owns, manages, or controls a ~~cosmetology salon or shop~~ to employ or use an unlicensed person as a *barber*, cosmetologist, *electrologist*, *esthetician*, or a manicurist, ~~or an esthetician~~;
- (b) to operate a *school of barbering*, cosmetology, *electrology*, *esthetics*, or *manicuring school* without complying with all of the regulations of 37-31-311;
- (c) to practice *barbering*, cosmetology, *electrology*, *esthetics*, or *manicuring* in any place other than in a licensed salon or shop as provided in this chapter, except when a ~~licensed operator~~ licensee is requested:
 - (i) by a customer to go to a place other than a licensed salon or shop and is sent to the customer from a licensed salon or shop; or
 - (ii) by a customer with a disability or homebound customer to go to the customer's place of residence; or
- ~~(d) for a person who owns, manages, or controls a manicuring salon to employ or use an unlicensed person as a manicurist;~~
- ~~(e) for a person who owns, manages, or controls an esthetics salon to employ or use an unlicensed person as an esthetician;~~
- ~~(f) to operate a manicuring school or a school of esthetics without complying with 37-31-311;~~
- ~~(g)~~(d) to violate any of the provisions of this chapter."

Section 9. Section 37-31-302, MCA, is amended to read:

“37-31-302. License required to practice, teach, or operate salon or shop, booth, or school. (1) A person may not practice or teach *barbering, cosmetology, electrology, esthetics, or manicuring* or ~~esthetics~~ without a license.

(2) A place may not be used or maintained for the teaching of *barbering, cosmetology, electrology, esthetics, or manicuring*, or ~~esthetics~~ for compensation except under a certificate of registration as a *school*.

(3) A person may not operate or manage a ~~cosmetology salon or shop, a manicuring salon, or an esthetics salon or practice~~ *cosmetology, manicuring, or esthetics* without a license.

(4) A person may not operate or conduct a school of *barbering, cosmetology, electrology, esthetics, or manicuring*, or ~~esthetics~~ or teach the ~~art of~~ *barbering, cosmetology, electrology, esthetics, or manicuring*, or ~~esthetics~~ without a license to teach *barbering, cosmetology, electrology, esthetics, or manicuring*, or ~~esthetics~~.

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, ~~or~~ corporation, or other legal entity desiring to operate a ~~cosmetology salon or shop~~ shall ~~make an application~~ apply to the department for a certificate of registration and license. The application must be accompanied by the registration fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid.”

Section 10. Section 37-31-303, MCA, is amended to read:

“37-31-303. Application for license to practice or teach. An applicant for a license to practice or teach *barbering, cosmetology, electrology, esthetics, or manicuring* or for a license to practice *manicuring* must ~~shall~~ qualify by filing an application prescribed by the board and by taking and passing pass the examination prescribed by the board *in order to qualify for licensure*. The license must be renewed ~~annually under~~ in accordance with the provisions of 37-31-322.”

Section 11. Section 37-31-304, MCA, is amended to read:

“37-31-304. Qualifications of applicants for license to practice. (1) *Before a person may practice barbering, the person shall obtain a license to practice barbering from the department. Before a person may practice cosmetology, the person shall obtain a license to practice cosmetology from the department. Before a person may practice electrology, the person shall obtain a license to practice electrology from the department. Before a person may practice manicuring, the person shall obtain a license to practice manicuring from the department unless the person is licensed to practice cosmetology. Before a person may practice esthetics, the person shall obtain a license to practice esthetics from the department unless the person is already licensed to practice cosmetology.*

(2) (a) *To be eligible to take the examination to practice barbering, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 1,500 hours in a registered barbering*

school and must have received a diploma from the barbering school or must have completed the course of study in barbering at a school of cosmetology authorized to offer a course of study in barbering prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file a written application and deposit the application fee with the department and pass an examination as to fitness to practice barbering.

(c) The board shall issue a license to practice barbering, without examination, to a person licensed in another state if the board determines that:

(i) the other state's course of study hour requirement is equal to or greater than the hour requirement in this state; and

(ii) the person's license from the other state is current and the person is not subject to pending or final disciplinary action for unprofessional conduct or impairment.

~~(2)(3)~~ (a) To be eligible to take the examination to practice cosmetology, the applicant ~~may not be less than~~ *must be at least 18 years of age*, must be of good moral character, and must possess a high school diploma or ~~the its equivalent of a high school diploma~~ *that is recognized by the superintendent of public instruction. A person may apply to the board for an exception to the educational requirement of a high school diploma or the its equivalent of a high school diploma. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 2,000 hours in a registered cosmetology school and must have received a diploma from the cosmetology school or must have completed the course of study in cosmetology prescribed by the board.*

~~(b)~~ A person qualified under subsection ~~(2)(a)~~ (3)(a) shall file ~~with the department~~ a written application ~~to take the examination and shall deposit with the department~~ the required ~~examination~~ application fee with the department and pass an examination as to fitness to practice cosmetology.

(4) (a) To be eligible to take the examination to practice electrology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of education, training, and experience in the field of electrology as prescribed by the board by rule.

(b) A person qualified under subsection (4)(a) shall file a written application and deposit the required application fee with the department and pass an examination as to fitness to practice electrology.

~~(3)(5)~~ (a) To be eligible to take the examination to practice manicuring, an applicant ~~may not be less than~~ *must be at least 18 years of age*, must be of good moral character, ~~and must possess a high school diploma, the or its equivalent of a high school diploma that is recognized by the superintendent of public instruction, or a certificate of completion from a vocational-technical program;~~ *and. The applicant must have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring. A person may apply to the board for an exception to the educational requirement of a high school diploma, the or its equivalent of a high school diploma, or a certificate of completion from a vocational-technical program certificate of completion. The board shall adopt by rule procedures for granting an exception.*

(b) A person qualified under subsection ~~(3)(a)~~ (5)(a) shall file ~~with the department~~ a written application to take the examination and deposit ~~with the department~~ the required examination application fee with the department and pass an examination as to fitness to practice manicuring.

~~(4)(6)~~ (a) To be eligible to take the examination to practice esthetics, an applicant:

~~(i) may not be under~~ must be at least 18 years of age,

~~(ii) must be of good moral character;~~ and

~~(iii) must possess a high school diploma, the or its equivalent of a high school diploma that is recognized by the superintendent of public instruction, or a certificate of completion from a vocational-technical program; and~~

~~(iv) The applicant must have completed a course of study prescribed by the board and consisting of not less than 650 hours of training and instruction in a registered school of cosmetology or a registered school of esthetics. A person may apply to the board for an exception to the educational requirement of a high school diploma, the or its equivalent of a high school diploma, or a vocational-technical program certificate of completion. The board shall adopt by rule procedures for granting an exception.~~

(b) A person qualified under subsection ~~(4)(a)~~ (6)(a) shall:

~~(i) file with the department~~ a written application to take the examination;

~~(ii) and deposit with the department~~ the required examination application fee; with the department and

~~(iii) pass an examination as to fitness to practice esthetics.”~~

Section 12. Section 37-31-305, MCA, is amended to read:

“37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach manicuring or esthetics to persons seeking only to be licensed to practice manicuring or esthetics, or to teach cosmetology, the person shall obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma that is recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(3) Before a person may teach manicuring to a person seeking only to be licensed to practice manicuring, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach manicuring.

(4) To be eligible to take an examination to obtain a license to teach manicuring, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice manicuring or cosmetology issued by the department and have received a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a manicurist or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(5) Before a person may teach esthetics to a person seeking only to be licensed to practice esthetics, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach esthetics.

(6) To be eligible to take an examination to obtain a license to teach esthetics, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice esthetics or cosmetology issued by the department and have received a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as an esthetician or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(7) *To be eligible to take an examination to obtain a license to teach barbering, a person must:*

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice barbering issued by the department and have received a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion of 500 hours of student teacher training; or

(ii) have been actively engaged as a barber for 3 continuous years immediately before taking the teacher's examination.

(8) *To be eligible to take an examination for a license to teach electrology, a person must:*

(a) be a high school graduate or possess an equivalent of a high school diploma recognized by the superintendent of public instruction;

(b) have a 100-hour teacher certificate; and

(c) have been actively engaged as an electrologist for 3 continuous years immediately preceding taking the teacher's examination."

Section 13. Section 37-31-308, MCA, is amended to read:

"37-31-308. Examination — reexamination — exemption for persons with disabilities. (1) Examinations for a license to practice *barbering, cosmetology, electrology, esthetics, or manicuring, or esthetics* or to teach *barbering, cosmetology, electrology, esthetics, or manicuring, or esthetics* must be held at places and times specified by the board. ~~The examinations must be supervised by the board.~~ The examinations may not be confined to a specific method or system. *The board may contract with an outside agency for examination and grading services.* ~~The examinations must be conducted by persons who hold current licenses to practice in the profession for which the applicant is being examined.~~

~~(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:~~

~~(a) sooner than 6 months after the date of the second failure; or~~

~~(b) until the applicant has taken 200 hours additional training at a registered school of cosmetology approved by the board.~~

~~(3) Anyone failing twice to pass the examination for a license to practice manicuring or a license to practice esthetics shall meet the additional requirements prescribed by the board before applying to retake the examination.~~

~~(4) Anyone failing twice to pass the examination for a license to teach cosmetology, manicuring, or esthetics shall wait 1 year before reapplying to take the examination. Upon reapplying, the applicant shall provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.~~

~~(5)(2) Persons with physical disabilities trained for *barbering*, cosmetology, *electrology*, *esthetics*, or manicuring or esthetics by the department of public health and human services are, for a period of 1 year immediately following their graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of public health and human services that a department of public health and human services beneficiary has successfully completed the required training in a *school of barbering*, cosmetology, *electrology*, *esthetics*, or a manicuring, or an esthetics school, the department shall issue the person the necessary certificate or license to practice the profession in this state."~~

Section 14. Section 37-31-311, MCA, is amended to read:

"37-31-311. Schools — certificate of registration — requirements — bond — curriculum. (1) A person, firm, partnership, or corporation, or other legal entity may not operate a school for the purpose of teaching *barbering*, cosmetology, *electrology*, *esthetics*, or manicuring, or esthetics for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate must be filed with the department on a form prescribed by the board.

(2) A school for teaching barbering may not be granted a certificate of registration unless it complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers who the board determines are necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of barbering.

(c) It maintains a school term of not less than 1,500 hours and prescribes a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of barbering.

~~(2)~~(3) A school for teaching cosmetology may not be granted a certificate of registration unless it complies ~~with or can~~ *is able to* comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times *involved* in the immediate supervision of the work of the school or other teachers who the board determines are necessary for the proper conduct of the school. There may not be more than 25 students ~~to~~ *for* each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the ~~ready and full~~ teaching of all subjects or practices of cosmetology.

(c) It maintains a school term of not less than 2,000 hours and prescribes a course of practical training and technical instruction equal to the requirements for board examinations. ~~The school's which~~ course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

~~(e) An owner or person in charge of a school of cosmetology may~~ *It does not* permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of cosmetology.

(4) A school for teaching electrology may not be granted a certificate of registration unless it maintains a school term, prescribes a course of practical training and technical instruction, and possesses apparatus and equipment necessary for teaching electrology as prescribed by the board.

~~(3)~~(5) A school for teaching manicuring may not be granted a certificate of registration unless it complies with subsections ~~(2)(a)~~ (3)(a) and ~~(2)(d)~~ (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ~~ready and full~~ teaching of all subjects or practices of manicuring.

(b) It maintains a school term and *prescribes* a course of practical training and technical instruction as prescribed by the board.

~~(c) An owner or person in charge of a school of manicuring may~~ *It does not* permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of manicuring.

~~(4)~~(6) A school for teaching esthetics may not be granted a certificate of registration unless it complies with subsections ~~(2)(a)~~ (3)(a) and ~~(2)(d)~~ (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of esthetics.

(b) It maintains a school term and a course consisting of not less than 650 hours of practical training and technical instruction as prescribed by the board.

~~(c) An owner or person in charge of a school of esthetics may~~ *It does not* permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of esthetics.

~~(5)(7)~~ Licenses or certificates of registration for schools of *barbering*, cosmetology, *electrology*, *esthetics*, or manicuring, ~~or esthetics~~ may be refused, revoked, or suspended, as provided in 37-31-331.

~~(6)(8)~~ A teacher or student teacher may not be permitted to practice *barbering*, cosmetology, *electrology*, *esthetics*, or manicuring, ~~or esthetics~~ on the public in a school of *barbering*, cosmetology, *electrology*, *esthetics*, or manicuring, ~~or esthetics~~. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

~~(7)(9)~~ The board may make further rules necessary for the proper conduct of schools of *barbering*, cosmetology, *electrology*, *esthetics*, and manicuring, ~~and esthetics~~.

~~(8)(10)~~ The board shall require the person, firm, partnership, or corporation, or other legal entity operating a school of *barbering*, cosmetology, *electrology*, *esthetics*, or manicuring, ~~or esthetics~~ to furnish a good and sufficient bond or other security in the amount of \$5,000 and in a form and manner prescribed by the board.

~~(9)(11)~~ A professional ~~cosmetology, manicuring, or esthetics~~ salon or shop may not be operated in connection with a school of *barbering*, cosmetology, *electrology*, *esthetics*, or ~~of manicuring, or of esthetics~~.

~~(10)(12)~~ The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of *barbering*, cosmetology, *electrology*, *esthetics*, or manicuring, ~~or esthetics~~."

Section 15. Section 37-31-312, MCA, is amended to read:

"37-31-312. Inspection. (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting ~~cosmetology~~ salons or shops and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a ~~cosmetology~~ salon, ~~manicuring~~ salon, ~~esthetics~~ salon or shop, booth, school of *barbering*, school of cosmetology, school of *electrology*, school of *esthetics*, or school of manicuring, ~~or school of esthetics~~ during business hours for the purpose of inspection, and the refusal of a licensee or school to permit the inspection during business hours is cause for revocation of ~~the~~ a licensee's license or a school's certificate of registration.

(2) Upon application for a license, a ~~cosmetology, manicuring, or esthetics~~ salon or shop shall pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a ~~cosmetology, manicuring, or esthetics~~ salon or shop, upon payment of the initial inspection fee, a temporary permit authorizing the ~~cosmetology, manicuring, or esthetics~~ salon or shop to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. ~~This~~ A temporary permit is not renewable.

(4) The department shall ~~cause an~~ require the inspector or inspectors ~~inspector~~, appointed as provided in subsection (1), to conduct an annual inspection of each ~~cosmetology, manicuring, and esthetics~~ salon or shop in the state."

Section 16. Section 37-31-321, MCA, is amended to read:

"37-31-321. Issuance of licenses and certificates. If the board finds that an applicant for ~~examination~~ licensure or for a certificate of registration has

complied with the requirements of this chapter and has paid the required fee, the board shall admit ~~the~~ a license applicant to examination and shall authorize the department to issue a license or certificate of registration to those who have successfully passed the examination or *who* are entitled to ~~the~~ a certificate of registration under this chapter."

Section 17. Section 37-31-322, MCA, is amended to read:

"37-31-322. Renewal — ~~delinquency late renewal fee.~~ (1) Licenses and certificates of registration may not be issued for longer than 1 year unless otherwise provided by department rule. Licenses and certificates of registration expire on the date set by department rule and may be renewed. Licenses and certificates of registration may be renewed by application made on or before the renewal date and by the payment of a required renewal fee. Expired licenses and certificates of registration may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and must be as set by the board.

(2) A *late renewal* fee prescribed by the board must be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates of registration made after ~~December 31 of each year or other predetermined renewal deadline~~ the renewal date."

Section 18. Section 37-31-323, MCA, is amended to read:

"37-31-323. Fees. (1) Fees for licenses and certificates of registration ~~shall~~ must be paid to the department in amounts prescribed by the board.

(2) The license and registration fees ~~shall~~ must be paid ~~annually, unless otherwise provided by board rule,~~ in advance to the department *unless otherwise provided by board rule.*

(3) ~~No other~~ Other or additional license or registration fee fees may not be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of *barbering, cosmetology, electrology, esthetics, or manicuring.*"

Section 19. Section 37-31-331, MCA, is amended to read:

"37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, ~~or~~ corporation, *or other legal entity* operating a ~~cosmetology salon, manicuring salon, esthetics salon or shop,~~ or a school of *barbering, cosmetology, electrology, esthetics, or manicuring,* ~~or esthetics~~ to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of public health and human services for the regulation of ~~cosmetology salons or shops, manicuring salons, esthetics salons,~~ or schools of *barbering, cosmetology, electrology, esthetics, or manicuring,* ~~or esthetics;~~

(c) gross malpractice;

(d) continued practice by a person who knowingly has an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of ~~morphine or~~ any habit-forming drug;

(f) permitting a certificate of registration or license to be used when the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) The board may not refuse to authorize the department to issue or renew a license or to revoke or suspend a license already issued until after notice and opportunity for a hearing.”

Section 20. Section 39-51-204, MCA, is amended to read:

“39-51-204. Exclusions from definition of employment. (1) The term “employment” does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor’s spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) “freelance correspondent” is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) “newspaper carrier” means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee’s main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist *or barber* who is licensed under Title 37, chapter 31, ~~or a barber who is licensed under Title 37, chapter 30,~~ and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers’ compensation;

(ii) who contracts with a ~~cosmetology~~ salon *or shop*, as defined in 37-31-101, ~~or a barbershop, as defined in 37-30-101, which~~ and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the ~~cosmetology~~ salon or ~~shop~~ ~~barbershop~~ may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a

program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in

attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act; or

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act.”

Section 21. Section 49-2-101, MCA, is amended to read:

“49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Age” means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) “Aggrieved party” means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.

(3) “Commission” means the commission for human rights provided for in 2-15-1706.

(4) “Commissioner” means the commissioner of labor and industry provided for in 2-15-1701.

(5) “Credit” means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. It includes without limitation the right to incur and defer debt that is secured by residential real property.

(6) “Credit transaction” means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(7) “Creditor” means a person who, regularly or as a part of the person’s business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(8) "Department" means the department of labor and industry provided for in 2-15-1701.

(9) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(10) "Employee" means an individual employed by an employer.

(11) "Employer" means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(12) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(13) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

(14) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.

(15) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(16) "National origin" means ancestry.

(17) (a) "Organization" means a corporation, association, or any other legal or commercial entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

(b) The term does not include a labor organization.

(18) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.

(19) (a) "Physical or mental disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(20) (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions

and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, ~~barbershop, beauty parlor~~ *barbering, cosmetology, electrology, esthetics, or manicuring salon or shop*, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.”

Section 22. Section 50-61-103, MCA, is amended to read:

“50-61-103. Application of chapter — definitions. This chapter applies to the occupancies defined below:

(1) “Assembly occupancy” means the occupancy or use of a building or structure or any portion ~~thereof~~ *of a building or structure* by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others:

- (a) armories;
- (b) assembly halls;
- (c) auditoriums;
- (d) bowling alleys;
- (e) broadcasting studios;
- (f) chapels;
- (g) churches;
- (h) club rooms;
- (i) dance halls;
- (j) exhibition rooms;
- (k) gymnasiums;
- (l) lecture halls;
- (m) lodge rooms;
- (n) motion picture theaters;
- (o) museums;
- (p) night clubs;
- (q) opera houses;
- (r) passenger stations;
- (s) pool rooms;
- (t) recreation areas;

- (u) restaurants;
- (v) skating rinks;
- (w) television studios;
- (x) theaters; and
- (y) taverns.

(2) "Business occupancy" means the occupancy or use of a building or structure or any portion ~~thereof~~ *thereof of a building or structure* for the transaction of business or the rendering or receiving of professional services, including among others:

- (a) banks;
- (b) ~~barbershops~~ *barbering, cosmetology, electrology, esthetics, or manicuring salons or shops;*
- ~~(c)~~ *beauty parlors;*
- ~~(d)~~ *(c) office buildings;*
- ~~(e)~~ *(d) radio stations;*
- ~~(f)~~ *(e) telephone exchanges; and*
- ~~(g)~~ *(f) television stations.*

(3) "Educational occupancy" means the occupancy or use of a building or structure or any portion ~~thereof~~ *thereof of a building or structure* by persons assembled for the purpose of learning or receiving educational instruction, including among others:

- (a) academies;
- (b) colleges;
- (c) libraries;
- (d) schools; and
- (e) universities.

(4) "Industrial occupancy" means the occupancy or use of a building or structure or any portion ~~thereof~~ *thereof of a building or structure* for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, including among others:

- (a) assembly plants;
- (b) creameries;
- (c) electric substations;
- (d) factories;
- (e) ice plants;
- (f) laboratories;
- (g) laundries;
- (h) manufacturing plants;
- (i) mills;
- (j) power plants;
- (k) processing plants;
- (l) pumping stations;

- (m) repair garages;
- (n) smokehouses; and
- (o) workshops.

(5) "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof of a *building or structure* by persons harbored or detained to receive medical, charitable, or other care or treatment or by persons involuntarily detained, including among others:

- (a) ~~asylums~~ *mental health facilities*;
- (b) homes for the aged;
- (c) hospitals;
- (d) ~~houses of correction~~ *correctional facilities*;
- (e) day-care facilities;
- (f) infirmaries;
- (g) jails;
- (h) nurseries;
- (i) orphanages;
- (j) nursing homes;
- (k) penal institutions;
- (l) reformatories;
- (m) sanitariums;
- (n) long-term care facilities; and
- (o) boarding homes.

(6) "Residential occupancy" means the occupancy or use of a building or structure or any portion thereof of a *building or structure* by persons for whom sleeping accommodations are provided and who are not harbored or detained to receive medical, charitable, or other care or treatment or are not involuntarily detained, including among others (but not including single-family private houses):

- (a) apartments;
- (b) clubhouses;
- (c) convents;
- (d) dormitories;
- (e) dwellings;
- (f) hotels;
- (g) motels;
- (h) multifamily houses; and
- (i) lodging houses."

Section 23. Repealer. Sections 2-15-1746, 37-30-101, 37-30-201, 37-30-202, 37-30-203, 37-30-301, 37-30-303, 37-30-305, 37-30-307, 37-30-308, 37-30-310, 37-30-311, 37-30-401, 37-30-402, 37-30-403, 37-30-404, 37-30-405, 37-30-406, 37-30-407, 37-30-411, 37-30-412, 37-30-413, 37-30-421, 37-30-422, 37-30-423, 37-30-424, 37-30-501, 37-32-101, 37-32-102, 37-32-103, 37-32-201,

37-32-301, 37-32-302, 37-32-304, 37-32-305, 37-32-306, and 37-32-311, MCA, are repealed.

Section 24. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 37, chapter 31, part 1, and the provisions of Title 37, chapter 31, part 1, apply to [section 3].

Section 25. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 8, 2003

CHAPTER NO. 244

[HB 354]

AN ACT CREATING AND REVISING EXEMPTIONS TO THE PRACTICE OF BARBERING, COSMETOLOGY, AND APPLICATION OF MAKEUP AND OTHER SERVICES INVOLVING ESTHETICS IN CASES OF EMERGENCY AND FOR CERTAIN VISUAL ARTS PRODUCTIONS; AMENDING SECTION 37-31-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exemptions. (1) Nothing in this chapter prohibits barbering, including the application of masks, makeup, or other theatrical devices, in the course of or incidental to a theatrical or other visual arts production by persons employed or under contract to provide these services.

(2) Notwithstanding the provisions of 37-30-501, a person exempt under this section may not be charged a penalty for violating this chapter or be required to register or to obtain a license under this chapter unless the person engages in the practice of barbering, as defined in 37-30-101, outside of the course of or without connection to a theatrical or other visual arts production.

Section 2. Section 37-31-102, MCA, is amended to read:

“37-31-102. Exemptions. Nothing in this chapter prohibits:

(1) ~~service in case of emergency or~~ *service in case of emergency or* domestic administration without compensation;

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; ~~or~~

(3) services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair; *or*

(4) *barbering, cosmetology, or esthetics services, including the application of masks, makeup, or other theatrical devices, in the course of or incidental to a theatrical or other visual arts production, including television or motion pictures, by persons employed or under contract to provide these services.”*

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 30, and the provisions of Title 37, chapter 30, apply to [section 1].

Section 4. Coordination instruction. If House Bill No. 196 and [this act] are both passed and approved, then [section 1 of this act] is void.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2003

CHAPTER NO. 245

[HB 368]

AN ACT EXTENDING THE 2-YEAR TIME LIMIT FOR SUBMITTING CLAIMS FOR REIMBURSEMENT FROM THE PETROLEUM TANK RELEASE CLEANUP FUND; MODIFYING THE ELIGIBILITY REQUIREMENTS; REVISING PROCEDURES FOR REIMBURSEMENT OF ELIGIBLE COSTS; PROVIDING FOR THIRD-PARTY REVIEW OF CLAIMS AND PLANS; REVISING THE AUTHORITY OF THE BOARD; AMENDING SECTIONS 75-11-307, 75-11-308, 75-11-309, 75-11-313, AND 75-11-318, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-307, MCA, is amended to read:

“75-11-307. Reimbursement for expenses caused by a release. (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except *that* if the corrective action plan addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) (i) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund; and

(ii) expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4); and

~~(h) expenses for work completed by or on behalf of the owner or operator more than 2 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage; and~~

(h) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

(3) An owner or operator may designate a person as an agent to receive the reimbursement if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (5):

(a) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$495,000:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993; and

(b) for all other releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$982,500:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of \$1 million, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 2. Section 75-11-308, MCA, is amended to read:

"75-11-308. Eligibility. (1) An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:

~~(a) the release was discovered on or after April 13, 1989;~~

(a) *the release was discovered on or after April 13, 1989, and the release occurred from:*

(i) *an underground storage tank, as defined in 75-11-503, that was in compliance with 75-11-509 at the time that the release was discovered;*

(ii) *a petroleum storage tank, as defined in 75-11-302, that was in compliance with the applicable state and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum release from a petroleum storage tank at the time that the release was discovered; or*

(iii) *an underground storage tank, as defined in 75-11-503, that the property owner had no previous knowledge of if the tank was in compliance with the applicable state and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum release at the time that the release was discovered;*

~~(b) the department is notified of the release in the manner and within the time provided by law or rule;~~

~~(c) the department has been notified of the existence of the tank in the manner required by department rule or has waived the requirement for notification;~~

~~(d)(b)~~ the release was an accidental release;

~~(e)(c) with the exception of the release, following the discovery of the release, the operation and management of the tank complied the underground storage tank from which the release occurred was removed or had a valid permit pursuant to 75-11-509 and the petroleum storage tank remained in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases when the release was discovered and remained in compliance following discovery of the release;~~ and

~~(d)~~ the owner or operator undertakes corrective action to respond to the release and the corrective action is undertaken, in accordance with a corrective action plan approved by the department, from the time of discovery until the release is resolved.

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

- (a) a tank located at a refinery or a terminal of a refiner;
- (b) a tank located at an oil and gas production facility;
- (c) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was operated by a lessee of a railroad in the course of nonrailroad operations;
- (d) a tank belonging to the federal government;
- (e) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or
- (f) a mobile storage tank used to transport petroleum or petroleum products from one location to another.

(3) When, subsequent to the discovery of a release, an owner or operator fails to remain in compliance as required by subsection ~~(1)(e)~~ (1)(c) or fails to conduct corrective action as required by subsection ~~(1)(f)~~ (1)(d) and is issued a violation letter by the department, all reimbursement of claims submitted after the date of the violation letter must be suspended. Upon a determination by the department that all violations identified in the violation letter have been corrected, all suspended and future claims may be reimbursed according to criteria established by the board. In determining the amount of reimbursement, if any, the board may consider the effect and duration of the noncompliance.”

Section 3. Section 75-11-309, MCA, is amended to read:

“75-11-309. Procedures for reimbursement of eligible costs. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner’s or operator’s petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(c) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(c) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(d) The department shall notify the owner or operator ~~and the board~~ of its approval of a corrective action plan *and shall promptly submit a copy of the approved corrective action plan to the board.*

(e) The owner or operator shall implement the approved plan. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

(f) (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) *The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.*

(iii) *If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.*

(iv) *If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board. ~~The board shall forward each claim and appropriate documentation to the department. The department shall notify the board of any costs that the department considers not reimbursable because of any failure to meet the requirements of subsection (2). The department shall inform the owner or operator of any notification given to the board.~~*

(g) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(h) In addition to the documentation in subsections (1)(f) and (1)(g), when the release is claimed to have originated from a double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered;

(ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

(iii) that the double-walled tank system was properly installed and made of materials and constructed in accordance with applicable department regulations.

(2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

- (a) the expenses for which reimbursement is claimed:
 - (i) are eligible costs; and
 - (ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and
- (b) the owner or operator:
 - (i) is eligible for reimbursement under 75-11-308; and
 - (ii) has complied with this section and any rules adopted pursuant to this section.
- (3) If an owner or operator disagrees with a board determination under subsection (2), the owner or operator may submit a written request for a hearing before the board. The hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.
- (4) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.
- (5) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.
 - (b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated under subsection (4).
 - (c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

Section 4. Review of corrective action plans and claims. (1) To ensure that the fund provided for in 75-11-313 is being utilized in the most efficient manner, the board may implement a program of third-party review for corrective action plans and claims. The board may submit a corrective action plan or claim for review by a qualified third party of the board's choosing.

(2) If a third-party review suggests that a corrective action plan is inappropriate for the release, the board may remand the plan to the department for further review.

(3) If a third-party review suggests that submitted costs do not comply with the requirements of 75-11-309(2)(a), the board may deny the costs, subject to 75-11-309(3).

Section 5. Section 75-11-313, MCA, is amended to read:

"75-11-313. Petroleum tank release cleanup fund. (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections ~~(3)(b)~~ (3)(c) and ~~(3)(e)~~ (3)(d). Administrative costs

under ~~subsection~~ *subsections* (3)(a) and (3)(b) must be paid pursuant to a legislative appropriation.

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature;

(d) money loaned to the board by the board of investments; and

(e) all interest earned on money in the fund.

(3) ~~The~~ *As provided in 75-11-318, the fund may be used only:*

(a) to administer this part, including payment of board ~~and department~~ expenses associated with administration;

(b) *to pay the actual and necessary department expenses associated with administration;*

~~(b)(c)~~ *to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and*

~~(c)(d)~~ *for repayment of any advance and any loan made pursuant to 17-6-225, plus interest earned on the advance or loan.*

(4) Whenever the board accepts a loan from the board of investments pursuant to 17-6-225, the receipts from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that fiscal year."

Section 6. Section 75-11-318, MCA, is amended to read:

"75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators. *The board may hire its own staff to assist in the implementation of this part.*

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(2), shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business that may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) ~~The department shall provide staff support to the board as the department determines it is able.~~ The board shall use the fund to pay for:

~~(a) for department staff used;~~

(a) department expenses incurred in providing assistance to the board. The board shall review and comment on all department administrative budget proposals that are assessed against the fund prior to submittal of the department

budget for legislative approval. Department administrative expenses on behalf of the board may include:

- (i) ~~for~~ the review or preparation of corrective action plans;
- (ii) ~~for~~ the oversight of corrective action undertaken by owners and operators for the purposes of this part; and
- (iii) ~~for the review and processing of claims for reimbursement submitted by owners and operators under this part~~ *the actual and necessary administrative support provided to the board;* ~~and~~
- (b) ~~for~~ department of transportation staff *expenses* used for the collection of the petroleum storage tank cleanup fee;
- (c) *third-party review of corrective action plans or claims pursuant to [section 4];*
- (d) *board staff expenses; and*
- (e) *expenses of implementing the board's duties as provided in this part.*
- (5) The board shall adopt rules to administer this part, including:
 - (a) rules governing submission of claims by owners or operators to the department and board;
 - (b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;
 - (c) procedures for the review and approval of corrective action plans;
 - (d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part;
 - (e) the criteria and reimbursement rates applicable to those owners and operators who comply with a violation letter issued by the department; and
 - (f) other rules necessary for the administration of this part.
- (6) The board may apply for, accept, and repay loans from the board of investments pursuant to 17-6-225."

Section 7. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 75, chapter 11, part 3, and the provisions of Title 75, chapter 11, part 3, apply to [section 4].

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Applicability. [Section 1] applies to all claims for reimbursement of expenses on file with the department of environmental quality on [the effective date of this act].

Approved April 8, 2003

CHAPTER NO. 246

[HB 414]

AN ACT PROVIDING A GRACE PERIOD FOR REGISTRATION OF MOTORBOATS, SAILBOATS, PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES; AUTHORIZING THE OPERATION OF A MOTORBOAT, SAILBOAT, PERSONAL WATERCRAFT,

SNOWMOBILE, OR OFF-HIGHWAY VEHICLE DURING THE GRACE PERIOD; AMENDING SECTIONS 23-2-511, 23-2-512, 23-2-616, 23-2-618, AND 23-2-817, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-511, MCA, is amended to read:

“23-2-511. Operation of unnumbered motorboats prohibited — display of decals. (1) ~~Every~~ *Subject to 23-2-512(6), every* motorboat on the waters of this state, propelled by a motor or an engine of any description, must be properly numbered and display valid license decals. ~~No~~ *Subject to 23-2-512(6), a person may not* operate or give permission for the operation of any motorboat on ~~such~~ *the waters of this state* unless the motorboat is numbered and displays valid license decals in accordance with this part, with applicable federal law, or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat is in full force and effect;

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on ~~such~~ *the* motorboat; and

(c) a temporary permit has been obtained from the county in which the boat is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in 7-16-2121.

(2) Upon transfer of ownership of a motorboat from a registered boat dealer or manufacturer, the transferred motorboat may be operated on the waters of this state for 30 consecutive calendar days immediately following the transfer of ownership without displaying the numbers and license decal required by subsection (1) provided that when the motorboat is operated during those 30 consecutive calendar days, a bill of sale or other evidence of transfer reciting the date of the transfer of ownership is retained in the motorboat and is exhibited to a warden or other officer upon request.”

Section 2. Section 23-2-512, MCA, is amended to read:

“23-2-512. Identification number. (1) The owner of each motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of \$3.50. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner.

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft for the current year of certification before the application for certification or recertification may be accepted by the county treasurer.

(3) If the ownership of a motorboat, sailboat, or personal watercraft changes, a new application form with the certification fee must be filed within a

reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part continue in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part. *The owner of a motorboat, sailboat, or personal watercraft registered under the provisions of this section may operate the boat between January 1 and February 15 without displaying the certificate of number or license decals for the current year if during that period the owner displays upon the boat the certificate of number or license decals assigned for the previous year. A certificate of number renewed by February 15 may not be considered delinquent.*

(7) In the event of a transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of the purchaser's interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within a reasonable time if the holder's address no longer conforms to the address appearing on the certificate and shall furnish the county treasurer with the new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. Numerals, letters, or devices other than those used in connection with the identifying number issued may not be placed in the proximity of the identifying number. Numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its

identifying number may not be carried in a manner that interferes with the motorboat's, sailboat's, or personal watercraft's identification. A number other than the number and license decal assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may not be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft.

(b) The certificate of number must be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

(10) Fees, other than the fee in lieu of tax, collected under this section must be transmitted to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(11) An owner of a motorboat, sailboat, or personal watercraft shall within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name when the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, or abandoned or within 60 days after a change of the state of principal use or if a motorboat becomes documented as a vessel of the United States."

Section 3. Section 23-2-616, MCA, is amended to read:

"23-2-616. Registration and decals — application and issuance — use of certain fees. (1) Except for a snowmobile registered under 23-2-621 and except as provided in 23-2-618, a snowmobile may not be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration must be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application must contain the following information:

- (a) the name and address of the owner;
- (b) the certificate of ownership number;
- (c) the make of the snowmobile;
- (d) the model name of the snowmobile;
- (e) the year of manufacture;
- (f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and
- (g) other information that the department of justice may require.

(3) The application must be accompanied by a decal-registration fee of \$6.50, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt that must contain information considered necessary by the department of justice and a

listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the decal-registration fee and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202.

(6) All money collected from payment of decal-registration fees and all interest accruing from use of this money must be forwarded to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the state general fund."

Section 4. Section 23-2-618, MCA, is amended to read:

"23-2-618. Application for registration and decals to be made annually — grace periods. Application must be made annually to the county treasurer for registration and the issuance of a decal indicating that the fee in lieu of property tax has been paid for the current year. All registrations and decals expire on June 30 of each year. *The owner of a snowmobile registered under the provisions of this section may operate the snowmobile without the registration and decal for the current year between July 1 and August 15 if during that period the owner possesses the registration receipt and decal for the previous year. A snowmobile registered by August 15 is not considered to be delinquent for registration purposes.*"

Section 5. Section 23-2-817, MCA, is amended to read:

"23-2-817. Registration fee — application and issuance — disposition. (1) Each off-highway vehicle is subject to an annual registration fee of \$2.

(2) The county treasurer shall collect the annual fee when the fee in lieu of tax is collected.

(3) Application for registration must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The application must contain:

- (a) the name and home mailing address of the owner;
- (b) the certificate of ownership number;
- (c) the name of the manufacturer of the off-highway vehicle;
- (d) the model number or name;
- (e) the year of manufacture;
- (f) a statement evidencing payment of the fee in lieu of property tax; and
- (g) such other information as the department of justice may require.

(4) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt, which must

contain the information considered necessary by the department of justice and a listing of the fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(5) All registration fees collected must be forwarded to the department of justice and deposited in the general fund.

(6) *The owner of an off-highway vehicle registered under the provisions of this section may operate the off-highway vehicle without the registration receipt for the current year for 45 days after the registration is due if during that period the owner possesses the registration receipt for the previous year. An off-highway vehicle registered within the 45-day period is not considered to be delinquent for registration purposes.*

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2003

CHAPTER NO. 247

[HB 428]

AN ACT REVISING THE RECLAMATION REQUIREMENTS FOR METAL MINES BY ELIMINATING A PROVISION NOT REQUIRING BACKFILLING; AMENDING SECTION 82-4-336, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-336, MCA, is amended to read:

“82-4-336. Reclamation plan and specific reclamation requirements. (1) Taking into account the site-specific conditions and circumstances, disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.

(2) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.

(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval for the proposed change.

(5) Provision must be made to avoid accumulation of stagnant water in the development area to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(6) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.

(7) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering the faces with material or fill not susceptible itself to generation of objectionable effluents in order to mitigate the generation of objectionable effluents; or

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department; or

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

(8) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

(9) (a) With regard to disturbed land other than open pits and rock faces, the reclamation plan must provide for the reclamation of all disturbed land to comparable utility and stability as that of adjacent areas.

(b) With regard to open pits and rock faces, the reclamation plan must provide for reclamation to a condition:

(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(ii) that affords some utility to humans or the environment; and

(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands.

~~(c) The reclamation of open pits and rock faces does not require backfilling, in whole or in part, except and only to the extent necessary to meet the requirements of the applicable provisions of Title 75, chapters 2 and 5.~~

(10) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(11) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.

(12) The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges.”

Section 2. Coordination instruction. If Senate Bill No. 366 and [this act] are both passed and approved, then [this act] is void.

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to permits and permit amendments approved by the department of environmental quality after September 30, 1995.

Approved April 8, 2003

CHAPTER NO. 248

[HB 458]

AN ACT ALLOWING A QUALIFYING PERSON TO COMBINE AN APPLICATION FOR A SPECIAL LICENSE PLATE WITH AN APPLICATION FOR A LICENSE PLATE BEARING THE SYMBOL OF A PERSON WITH A DISABILITY; AND AMENDING SECTION 61-3-479, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-479, MCA, is amended to read:

“61-3-479. (Temporary) Special certificate of registration and issuance of generic specialty license plates — qualifications. (1) The department shall issue a special certificate of registration and generic specialty license plates to a person who applies if the person presents written certification, in a form prescribed by the department, from the sponsoring organization indicating that the person is eligible to receive the generic specialty license plates.

(2) If the sponsor is a governmental body that has a written agreement with the county treasurer pursuant to 61-3-480, the department shall issue a special certificate of registration and generic specialty license plates to an eligible person who applies if the person pays the donation specified by the governmental body to the county treasurer at the time of application.

(3) A special certificate of registration and generic specialty license plates may be issued only for a light vehicle.

(4) The department may issue a special certificate of registration and generic specialty license plates to joint owners of a motor vehicle if one of the owners is determined by the sponsor to be eligible and if the eligible owner's name appears on the vehicle's special certificate of registration.

(5) (a) Except as provided in 61-3-472 through 61-3-481, a person who receives a special certificate of registration and generic specialty license plates is subject to the same rules and laws as those that govern number plates.

(b) Except as provided in 61-3-472 through 61-3-481, the department is subject to the same rules and laws as govern the issuance of number plates.

(c) Generic specialty license plates issued under 61-3-472 through 61-3-481 are not subject to the maximum 4-year limitation provided in 61-3-332(3)(a).

(6) *A person may combine an application for a generic specialty license plate with an application for a license plate with a design bearing a representation of a wheelchair as the symbol of a person with a disability as provided in 61-3-332(10)(g). (Terminates June 30, 2005—sec. 21, Ch. 402, L. 2001.)*

Approved April 8, 2003

CHAPTER NO. 249

[HB 479]

AN ACT REVISING THE LAWS THAT PROHIBIT TELECOMMUNICATIONS CARRIERS FROM SWITCHING A CUSTOMER'S TELECOMMUNICATIONS SERVICES WITHOUT THE CUSTOMER'S CONSENT; CLARIFYING THAT ENTITIES NOT OTHERWISE REGULATED BY THE PUBLIC SERVICE COMMISSION ARE SUBJECT TO THE PROHIBITION; DEFINING TERMS; PROHIBITING TELECOMMUNICATIONS CARRIERS AND OTHER ENTITIES FROM MISREPRESENTING PRODUCTS AND SERVICES TO BE CHARGED ON TELEPHONE BILLS; PROHIBITING INITIATION OF UNAUTHORIZED CHARGES TO BE PLACED ON TELEPHONE BILLS; ESTABLISHING REGISTRATION REQUIREMENTS FOR ENTITIES OFFERING OR BILLING FOR SERVICES AND PRODUCTS; ESTABLISHING PENALTIES; PROVIDING FOR NOTICE TO THE ATTORNEY GENERAL; PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY REQUEST COMPLAINTS OF VIOLATIONS; AMENDING SECTIONS 69-3-1301, 69-3-1302, 69-3-1303, AND 69-3-1305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-1301, MCA, is amended to read:

"69-3-1301. Purpose. The purpose of this part is to prohibit telecommunications carriers, including ~~carriers~~ *entities* not otherwise regulated by the commission, from switching a customer's telecommunications services from one telecommunications carrier to another without the customer's consent and to prohibit charges for a product or service not requested by or provided to the customer from being placed on the customer's telephone bill."

Section 2. Section 69-3-1302, MCA, is amended to read:

"69-3-1302. Definitions. As used in this part, the following definitions apply:

(1) *"Billing agent" means a telecommunications carrier that includes in a bill that it sends to a customer a charge for a product or service offered by a service provider.*

(2) *"Billing aggregator" means any entity, other than a service provider, that forwards the charge for a product or service offered by a service provider to a billing agent.*

~~(1)~~(3) *"Commission" means the public service commission provided for in 2-15-2602.*

~~(2)~~(4) *"Customer" means a person who has purchased telecommunications services from a telecommunications carrier or who has been billed charges on a telephone bill for the services or products of another entity.*

~~(3)~~(5) "Local exchange company" means the same as provided in 53-19-302.

~~(4)~~(6) "Primary interexchange carrier" means the telecommunications carrier from which a customer chooses to purchase long-distance services.

(7) "Service provider" means any entity, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent.

~~(5)~~(8) (a) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. ~~A person~~ An entity providing other products and services is considered a telecommunications carrier only to the extent that the ~~person~~ entity is engaged in providing telecommunications services.

(b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226."

Section 3. Section 69-3-1303, MCA, is amended to read:

"69-3-1303. Prohibition — exceptions. (1) A telecommunications carrier may not request a change in a customer's primary interexchange carrier or local exchange company except:

(a) when the requesting carrier has obtained from the customer a document signed by the customer that contains clear and conspicuous disclosure of the customer's request for a change in telecommunications carrier;

(b) when the customer affected by the change initiates the contact with the carrier in order to request the change; or

(c) when the carrier who has initiated the change has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with rules prescribed by the commission.

(2) The documentation required in subsection (1):

(a) must be signed by the customer responsible for paying the charges on the account held by the telecommunications carrier; and

(b) may not be a part of any sweepstakes, contest, or similar promotional program.

~~(3) A telecommunications carrier or other entity may not initiate charges to be placed on a customer's telecommunications bill unless the service or product has been requested by and provided to the customer. A customer request must be made in the following manner:~~

~~(a) by written authorization, in which the telecommunications provider or other entity has obtained a document signed by the customer containing a clear and conspicuous disclosure of the customer's authorization or order of the product or service; or~~

~~(b) by verbal authorization, in which the telecommunications carrier or other entity has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with commission rules.~~

~~(4) The documentation provided for in subsections (3)(a) and (3)(b):~~

~~(a) must be signed by the customer responsible for paying the charges on the telecommunications bill; and~~

~~(b) may not be a part of a sweepstakes, contest, or similar promotional program.~~

~~(5) A customer is not liable for any charges submitted for billing on the local exchange company's telephone bill by another carrier or entity for products or services that the customer did not authorize or that were not provided to the customer.~~

~~(6) The provisions of subsections (3), (4), and (5) do not apply to a transaction between a customer and that customer's selected providers of local exchange or interexchange service."~~

Section 4. Section 69-3-1305, MCA, is amended to read:

"69-3-1305. Telecommunications Unauthorized change in telecommunications carrier — liability — penalty for violation. (1) A telecommunications carrier who initiates an unauthorized change in the customer's telecommunications carrier in violation of 69-3-1303 is liable:

(a) to the customer for all intrastate long-distance charges, interstate long-distance charges, monthly service charges, carrier switching fees, and other relevant charges incurred by the customer during the period of the unauthorized change; and

(b) to the customer's original telecommunications carrier for all charges related to reinstating service to the customer.

(2) A telecommunications carrier *or any other entity* who purposely or knowingly initiates an unauthorized change of a customer's telecommunications carrier under 69-3-1303 or ~~initiates charges to be billed on a customer's telephone bill for services or products not provided to or authorized by the customer~~ *this section* is guilty of a misdemeanor and *upon conviction* shall be punished as provided in 46-18-212.

(3) (a) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that ~~a person~~ *any entity* has initiated an unauthorized change of a customer's telecommunications carrier ~~or has initiated charges to be billed on a customer's telephone bill for services or products not provided or authorized~~, the commission may impose for each change ~~or charge~~ made in violation of 69-3-1303, a civil fine not to exceed \$1,000 for each violation, which must be deposited in the general fund.

(b) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that ~~a person~~ *an entity* has, with a frequency to indicate a general business practice, initiated unauthorized changes of customers' telecommunications carriers ~~or initiated charges to be billed on a customer's telephone bill for services or products not provided or authorized~~, the commission may *take any of the following actions*:

(i) notify the secretary of state, ~~and the secretary of state~~ *who shall then* suspend or revoke any license, registration, or other filing entitling that ~~person~~ *entity* to transact business in this state ;

(ii) *prohibit any billing aggregator from billing charges on behalf of the carrier or other entity determined to have engaged in a pattern of violations;*

(iii) *prohibit a billing agent that bills directly for the carrier or other entity determined to have engaged in a pattern of violations from billing charges on behalf of that carrier or other entity;*

(iv) *revoke the registration of a service provider or billing aggregator; or*

(v) *limit the prohibitions under this subsection (3)(b) to a specific period of time. A prohibition under this subsection (3)(b) may be withdrawn upon a showing of good cause.*

(4) *The commission shall provide adequate time for a billing agent that is prohibited from billing on behalf of a carrier or other entity under this section to terminate a contractual agreement with that carrier or other entity.*

(4)(5) *The remedies provided by this section are in addition to any other remedies, including injunctive relief, available by law."*

Section 5. Prohibitions on charges on bill — exceptions. (1) A telecommunications carrier, service provider, or other entity may not initiate charges to be placed on a customer's telecommunications bill unless the service or product has been requested by and provided to the customer. A customer request must be made in the following manner:

(a) by written authorization, in which the telecommunications carrier, service provider, or other entity has obtained a document signed by the customer containing a clear and conspicuous disclosure of the customer's authorization or order of the product or service; or

(b) by verbal authorization, in which the telecommunications carrier, service provider, or other entity has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with commission rules.

(2) (a) The documentation provided for in subsection (1)(a) must be signed by the customer responsible for paying the charges on the telecommunications bill.

(b) The documentation provided for in subsection (1) may not be a part of a sweepstakes, contest, or similar promotional program.

(3) A customer is not liable for any charges submitted for billing on the local exchange company's telephone bill by another carrier, service provider, or entity for products or services that the customer did not authorize or that were not provided to the customer.

(4) The provisions of subsections (1) through (3) do not apply to a transaction between a customer and that customer's selected providers of local exchange or interexchange service, except upon a finding by the commission that services billed were neither requested nor received.

Section 6. Liability for unauthorized charges on telephone bill — penalty for violation. (1) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that any entity has initiated unauthorized charges to be placed on a customer's telephone bill for services or products not provided or authorized or that a billing aggregator has caused unauthorized charges to be forwarded to a billing agent for placement on a telephone bill, the commission may impose a civil fine not to exceed \$1,000 for each violation. The fines must be deposited in the state general fund.

(2) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that a carrier or service provider has, with a frequency to indicate a general business practice, initiated unauthorized charges to be placed on a customer's telephone bill for services or products not provided or authorized or that a billing aggregator has caused unauthorized charges to be forwarded to a billing agent for placement on a telephone bill, the commission may take any of the following actions:

(a) notify the secretary of state, who shall then suspend or revoke any license, registration, or other filing entitling that carrier or service provider to transact business in this state;

(b) prohibit any billing agent that bills directly on behalf of the service provider determined to have engaged in a pattern of violations from placing the service provider's unauthorized charges on a customer's telephone bill;

(c) prohibit a carrier or service provider determined to have engaged in a pattern of violations from initiating unauthorized charges to be placed on a customer's telephone bill;

(d) prohibit a billing aggregator from forwarding that entity's unauthorized charges to a billing agent;

(e) revoke the registration of the service provider or billing aggregator; or

(f) limit the prohibitions under this subsection (2) to a specific period of time. A prohibition under this subsection (2) may be withdrawn upon a showing of good cause.

(3) The commission shall provide adequate time for a billing agent that is prohibited from billing on behalf of a service provider under this section to terminate contractual agreements with that service provider.

(4) The remedies provided by this section are in addition to any other remedies, including injunctive relief, available by law.

(5) A carrier or service provider that purposely or knowingly initiates unauthorized charges to be placed on a customer's telephone bill for services or products not provided to or authorized by the customer or a billing aggregator that causes unauthorized charges to be forwarded to a billing agent for placement on a telephone bill is guilty of a misdemeanor and upon conviction shall be punished as provided in 46-18-212.

Section 7. Misrepresentation concerning product or service — violations — complaints. (1) An entity may not misrepresent its association or affiliation with a telephone carrier when soliciting, inducing, or otherwise implementing the customer's agreement to purchase the products or services of the entity and to have the charge for the product or service appear on the customer's telephone bill.

(2) If the commission finds that an entity is operating in violation of any provision of this section, the commission may:

(a) order the carrier or a billing agent that bills directly for that entity to terminate the billing and collection services for that entity. The commission shall provide adequate time for the billing agent to terminate contractual agreements with the entity. This section does not preclude a carrier or billing agent from taking action on its own to terminate billing and collection services.

(b) prohibit the entity's billing aggregator from forwarding any charges from an entity operating in violation of this section to a carrier or billing agent for placement on a customer's telephone bill.

(3) Failure by an entity to respond to commission requests for information related to an investigation of a possible violation of this section is grounds for the commission to:

(a) order the carrier, billing aggregator, or billing agent that bills directly for the entity to cease billing and collection services for the service provider; or

(b) prohibit a billing aggregator from forwarding charges to the billing agent to be placed on a customer's telephone bill.

(4) This section does not obligate a billing agent to provide billing and collection services to a billing aggregator or service provider.

(5) A telephone company has a right of indemnity against anyone who has provided it with false information as to the status of charges billed on behalf of a service provider.

Section 8. Registration requirements — prohibitions — revocation.

(1) A service provider may not offer a product or service to a customer, the charge for which appears on the bill of a billing agent, unless the service provider is properly registered with the commission.

(2) A billing aggregator may not forward to a billing agent charges for a service or product offered by a service provider unless the billing aggregator is properly registered with the commission.

(3) A billing aggregator may not forward charges to a billing agent from a service provider who is required to be registered under this section and who is not properly registered under this section.

(4) A billing agent may not directly bill on behalf of a service provider that is not the billing agent if the service provider is not properly registered, if registration is required under this section.

(5) The commission shall provide a form for registration and establish the procedure for registering with the commission. A registration remains effective until revoked by the commission or surrendered by the service provider or billing aggregator.

(6) After notice and an opportunity for a hearing, the commission may revoke a registration.

(7) The commission may revoke the registration of a service provider that has:

(a) knowingly or repeatedly billed one or more customers for unauthorized service; or

(b) engaged in any other false or deceptive billing practices.

(8) The commission may revoke the registration of a billing aggregator that has:

(a) knowingly or repeatedly forwarded the charge for a service or product to a billing agent on behalf of a service provider that was required to be registered with the commission and that was not properly registered; or

(b) engaged in any other false or deceptive billing practices.

(9) Immediately following a revocation of registration under this section, the commission shall provide notice of the revocation to all telecommunications carriers and registered billing aggregators doing business in Montana.

Section 9. Submission of list of entities served by billing aggregator required. Each billing aggregator doing business in Montana shall submit to the commission a list of service providers and other entities for which the billing aggregator provides billing services. The commission shall adopt rules that specify information that must be included with the list in order to enforce the provisions of this part. The list must include the name and address of a contact person for each entity.

Section 10. Notice to attorney general. If the commission has reason to believe that any entity has violated any provision of the law for which a criminal penalty is provided or any law regarding fraud or consumer protection, the commission shall notify the attorney general.

Section 11. Codification instruction. [Sections 5 through 10] are intended to be codified as an integral part of Title 69, chapter 3, part 13, and the provisions of Title 69, chapter 3, part 13, apply to [sections 5 through 10].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2003

CHAPTER NO. 250

[HB 549]

AN ACT INCREASING TO \$30 THE SCHOLARSHIP DONATION FOR A COLLEGIATE LICENSE PLATE; AMENDING SECTION 61-3-465, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-465, MCA, is amended to read:

“61-3-465. Issuance — application — additional fee — disposition. (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

(a) compliance with 61-3-303, 61-3-311, and 61-3-312; and

(b) payment to the county treasurer of:

(i) an initial application and manufacturing fee of \$2.50, when required; and

(ii) an annual scholarship donation of ~~\$20~~ \$30 for the benefit of the institution named in the application.

(2) Once each month, the county treasurer shall, as provided in 15-1-504, transfer to the department of revenue the total of the amounts collected for:

(a) the initial application and manufacturing fee for deposit in the state general fund; and

(b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.

(3) Once each month, the department of revenue shall distribute to the student academic scholarship fund or foundation of each institution an amount equal to the total donations credited to that institution and transferred to the department of revenue by the county treasurers during the preceding month.”

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved April 8, 2003

CHAPTER NO. 251

[HB 711]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO MAIL A RENEWAL NOTICE PRIOR TO THE EXPIRATION OF A DRIVER'S LICENSE; PROVIDING A RENEWAL NOTICE FEE; AND AMENDING SECTION 61-5-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-111, MCA, is amended to read:

“61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may, in its discretion, appoint an agent to sell receipts.

(2) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain a full-face photograph of the licensee in the size and form prescribed by the department; a distinguishing number issued to the licensee; the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and either the licensee's customary signature or a digital reproduction of the licensee's customary signature. The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a commercial driver's license if the licensee has previously submitted a written request for the notice, either at the time of initial application or of renewal of the license. *The department shall mail the notice to the Montana mailing address shown on the driver's license unless the licensee has submitted a change of address as required by 61-5-115.*

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — \$4 a year or fraction of a year;

(b) motorcycle endorsement — 50 cents a year or fraction of a year;

(c) commercial driver's license:

(i) interstate — \$5 a year or fraction of a year;

(ii) intrastate — \$3.50 a year or fraction of a year;

(d) *renewal notice — 50 cents.*

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the

expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term.”

Approved April 8, 2003

CHAPTER NO. 252

[SB 114]

AN ACT CLARIFYING THE CALCULATION OF THE GROWTH RATE OF THE ENTITLEMENT SHARE POOL FOR EACH YEAR OF THE NEXT BIENNIUM BEGINNING WITH CALENDAR YEAR 2002; AMENDING SECTION 15-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government’s base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506;

(v) 25-9-804; and

- (vi) 27-9-103;
 - (e) certificate of ownership fees for manufactured homes pursuant to 15-1-116;
 - (f) financial institution taxes pursuant to Title 15, chapter 31, part 7;
 - (g) coal severance taxes allocated for county land planning pursuant to 15-35-108;
 - (h) all beer, liquor, and wine taxes pursuant to:
 - (i) 16-1-404;
 - (ii) 16-1-406; and
 - (iii) 16-1-411;
 - (i) late filing fees pursuant to 61-3-201;
 - (j) title and registration fees pursuant to 61-3-203;
 - (k) disabled veterans' flat license plate fees and purple heart license plate fees pursuant to 61-3-332;
 - (l) county personalized license plate fees pursuant to 61-3-406;
 - (m) special mobile equipment fees pursuant to 61-3-431;
 - (n) single movement permit fees pursuant to 61-4-310;
 - (o) state aeronautics fees pursuant to 67-3-101; and
 - (p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.
- (2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.
- (b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.
- (3) (a) Beginning with fiscal year 2002 and in each succeeding fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year ~~2004~~ 2002, by October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:
- (i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share

pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

- (A) counties;
- (B) consolidated local governments; and
- (C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	\$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - # 2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	\$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula	County Airport Industrial	\$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) \$0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received

from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to December 31, 2001.

Approved April 8, 2003

CHAPTER NO. 253

[SB 141]

AN ACT ALLOWING THE RELEASE OF CRIMINAL JUSTICE INFORMATION TO FIRE SERVICE AGENCIES AND FIRE MARSHALS REGARDING THE CRIMINAL INVESTIGATION OF A FIRE; PROVIDING A PROCEDURE FOR A PROSECUTOR TO PETITION THE COURT FOR RELEASE OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION IN CERTAIN CASES; AMENDING SECTIONS 44-5-103 AND 44-5-303, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-5-103, MCA, is amended to read:

"44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

- (a) criminal investigative information;
- (b) criminal intelligence information;
- (c) fingerprints and photographs;
- (d) criminal justice information or records made confidential by law; and
- (e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless the information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

- (i) records of traffic offenses maintained by the department of justice; or
- (ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information, including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) (a) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance.

(b) ~~The term~~ *The term* does not include criminal intelligence information.

(7) "Criminal justice agency" means:

- (a) any court with criminal jurisdiction;
- (b) any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice, *including a fire agency or fire marshal that conducts criminal investigations of fires;*

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order; or

(d) any agency of a foreign nation that has been designated by that nation's law or chief executive officer to perform as its principal function the administration of criminal justice and that has been approved for the receipt of criminal justice information by the Montana attorney general, who may consult with the United States department of justice.

(8) (a) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency.

(b) ~~The term~~ *The term* does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by foreign, federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) a nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains the information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.

(13) "Public criminal justice information" means:

(a) information made public by law;

(b) information of court records and proceedings;

(c) information of convictions, deferred sentences, and deferred prosecutions;

(d) information of postconviction proceedings and status;

(e) information originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) information considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(14) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(15) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable."

Section 2. Section 44-5-303, MCA, is amended to read:

"44-5-303. Dissemination of confidential criminal justice information — procedure for dissemination through court. (1) Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. *Permissible dissemination of confidential criminal justice information under this subsection includes receiving investigative information from and sharing investigative information with a fire service agency or fire marshal concerning the criminal investigation of a fire.*

(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal

responsibility for the security of the information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

(4) The county attorney or the county attorney's designee is authorized to receive confidential criminal justice information for the purpose of cooperating with local fetal, infant, and child mortality review teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of the review team. The review team and the county attorney or the designee shall maintain the confidentiality of the information.

(5) (a) *If a prosecutor receives a written request for release of confidential criminal justice information relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:*

(i) *file the action in the name of the city or county that the prosecutor represents and describe the city's or county's interest;*

(ii) *list as defendants anyone known to the prosecutor who has requested the confidential criminal justice information and anyone affected by release of the information;*

(iii) *request that the prosecutor be allowed to deposit the investigative file and any edited version of the file with the court pursuant to the provisions of Title 27, chapter 8;*

(iv) *request the court to:*

(A) *conduct an in camera review of the confidential criminal justice information to determine whether the demands of individual privacy do not clearly exceed the merits of public disclosure; and*

(B) *order the release to the requesting party defendant whatever portion of the investigative information or edited version of the information the court determines appropriate.*

(b) *In making an order authorizing the release of information under subsection (5)(a), the court shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited or complete confidential criminal justice information to persons who request the information.*

(c) *In an action filed for the court-ordered release of confidential criminal justice information under subsection (5)(a), the parties shall bear their respective costs and attorney fees.*

(6) *The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible."*

Section 3. Applicability. [This act] applies to any request for confidential criminal justice information made on or after [the effective date of this act].

Approved April 8, 2003

CHAPTER NO. 254

[SB 149]

AN ACT REVISING THE COMPOSITION OF THE DISTRICTS FROM WHICH THE DISTRICTING AND APPORTIONMENT COMMISSION MEMBERS ARE APPOINTED FOR THE PURPOSE OF POPULATION EQUALITY AND REDUCING THE NUMBER OF DISTRICTS FROM FOUR TO TWO; MAKING CORRESPONDING REVISIONS IN THE BOARD OF PUBLIC EDUCATION, BOARD OF REGENTS, COAL BOARD, AND HARD-ROCK MINING IMPACT BOARD APPOINTMENT PROVISIONS; AND AMENDING SECTIONS 2-15-1508, 2-15-1821, 2-15-1822, AND 5-1-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1508, MCA, is amended to read:

"2-15-1508. Appointments to board of public education and board of regents — conditions — vacancy. (1) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

- (a) Not more than ~~two~~ four may be from one district provided for in 5-1-102.
- (b) Not more than four may be affiliated with the same political party.
- (c) The terms of members appointed to each board are 7 years except as provided in subsection (3).
- (d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and the appointment must preserve the balance required by subsections (1)(a) and (1)(b).
- (e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(2) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before the person may serve as a member of either board.

(3) (a) One seat of the appointed members on the board of regents is reserved for membership by a student appointed by the governor. The student must be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents. The length of term of the student member is determined by the governor and must be for not less than 1 year and not more than 4 years. The term begins July 1 and ends June 30 of the years designated by the governor. The provisions of subsections (1)(a) and (1)(b) do not apply to the student member and may not affect the balance of the remaining appointive membership on the board of regents.

(b) The governor shall appoint the student provided for in subsection (3)(a) based upon a nomination provided by a student organization designated by the board of regents. The student organization shall nominate no fewer than three qualified students. If the governor finds that none of the students nominated are acceptable, the governor may request a new slate of nominees. Nominations must be forwarded to the governor in March immediately preceding the end of a regular term, and the governor shall make the appointment before the end of the succeeding June. In the event of a vacancy, a replacement must be appointed as soon as is practicable and in the same manner as the original appointment."

Section 2. Section 2-15-1821, MCA, is amended to read:

“2-15-1821. Coal board — allocation — composition. (1) There is a coal board composed of seven members.

(2) The coal board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(3) The governor shall appoint a seven-member coal board, as provided under 2-15-124.

(4) (a) The members of the coal board are selected as follows:

(i) two from the impact areas;

(ii) two with expertise in education; and

(iii) at least ~~one~~ *two* but not more than ~~two~~ *four* from each district provided for in 5-1-102.

(b) The governor shall further, in making these appointments, consider people from these fields:

(i) business;

(ii) engineering;

(iii) public administration; and

(iv) planning.”

Section 3. Section 2-15-1822, MCA, is amended to read:

“2-15-1822. Hard-rock mining impact board. (1) There is a hard-rock mining impact board.

(2) The hard-rock mining impact board is a five-member board.

(3) The hard-rock mining impact board shall include among its members:

(a) three persons who, when appointed to the board, reside in an area impacted or expected to be impacted by large-scale mineral development;

(b) at least ~~one person~~ *two persons* from each district provided for in 5-1-102;

(c) a representative of the hard-rock mining industry;

(d) a representative of a major financial institution in Montana;

(e) a person who, when appointed to the board, is an elected school district trustee;

(f) a person who, when appointed to the board, is an elected county commissioner;

(g) a member of the public-at-large.

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of 2-15-124 except that one of the members need not be an attorney licensed to practice law in this state, and the board shall elect a presiding officer from among its members.”

Section 4. Section 5-1-102, MCA, is amended to read:

“5-1-102. Composition of commission. (1) The majority and minority leaders of each house shall each designate one commissioner *for the commission provided for in 5-1-101.* ~~A commissioner~~ *Two commissioners* must be appointed from each district listed in subsection (2). The majority leader in the senate has first choice of the district from which the majority leader will select a commissioner, and the majority leader of the house has second choice. Within 20 days after their designation, the four commissioners shall select the fifth

member, who shall serve as the presiding officer of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select the fifth member.

(2) The commission districts are the following counties:

(a) District 1: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, ~~and Ravalli;~~

~~(b) District 2: Lewis and Clark, Powell, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, and Park, Sweet Grass, Stillwater, and Carbon;~~

~~(c) District 3: Glacier, Toole, Liberty, Hill, Blaine, Phillips, Valley, Daniels, Sheridan, Roosevelt, Richland, McCone, Garfield, Petroleum, Fergus, Judith Basin, Cascade, Chouteau, Teton, and Pondera; and~~

~~(d) District 4: Lewis and Clark, Meagher, Wheatland, Golden Valley, Musselshell, Treasure, Rosebud, Custer, Prairie, Dawson, Wibaux, Fallon, Carter, Powder River, Big Horn, and Yellowstone, Carbon, Stillwater, and Sweet Grass."~~

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 8, 2003

CHAPTER NO. 255

[SB 183]

AN ACT PROVIDING FOR EDUCATIONAL AID FOR CERTAIN PERSONS EXONERATED OF A CRIME BY POSTCONVICTION DNA TESTING; PROVIDING FOR STATE AID FOR TUITION, FEES, BOOKS, BOARD, AND ROOM; AUTHORIZING THE BOARD OF REGENTS OF HIGHER EDUCATION TO WAIVE TUITION AND FEES FOR PERSONS ELIGIBLE FOR AID; AMENDING SECTION 20-25-421, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Educational aid to wrongfully convicted persons exonerated by postconviction DNA testing. (1) Subject to appropriation by the legislature, a person who was convicted in this state of a felony offense, who was incarcerated in a state prison for any period of time, and whose judgment of conviction was overturned by a court based on the results of postconviction forensic DNA testing that exonerates the person of the crime for which the person was convicted is entitled to receive educational aid at the state's expense. The department of corrections shall authorize educational aid for any person entitled to it under this section. The department shall establish, by rule, the procedures for application, designation of authority to receive aid, procedures for payment of aid, and forms to be used for this program. Aid under this section must include expenses for tuition, fees, books, board, and room at any:

- (a) Montana community college;
- (b) unit of the Montana university system, as described in 20-25-201; or
- (c) accredited Montana tribally controlled community college.

(2) State aid under this section must include assistance, as described in subsection (1), in meeting any admission standards or criteria required at any of the institutions listed in subsection (1), including but not limited to assistance in satisfying requirements for a certificate of equivalency of completion of secondary education and assistance in completing any adult education program or courses. An adult education fund must be reimbursed by the state for any costs of completing an adult education program or courses under this section.

(3) The board of regents of higher education may waive fees and tuition for education provided under this section pursuant to 20-25-421. The department of corrections shall notify the board of regents before August 1 of each year of educational aid that is to be provided under this section for the next school year.

(4) The privilege of receiving aid under this section remains active for 10 years after the release of a person who qualifies for aid under subsection (1). State education aid must continue for up to a total of 5 years of aid within the 10-year aid period or until the degree or program for which the person is authorized under subsection (1) is completed, whichever is less, as long as the person continues to make satisfactory progress in the courses or program attempted. Aid is available for completion of any degree or program available from the institutions listed in subsection (1), at the recipient's choice.

Section 2. Section 20-25-421, MCA, is amended to read:

"20-25-421. Charges for tuition — waivers. (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or [section 1];

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

- (i) a paid or volunteer member of a municipal or rural fire department;
- (ii) a law enforcement officer as defined in 7-32-201; or
- (iii) a full-time highway patrol officer.

(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year in accordance with the national guard education benefit program provided for in 10-1-121."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 1, part 2, and the provisions of Title 53, chapter 1, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2003.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to a person exonerated on or before [the effective date of this act].

Approved April 8, 2003

CHAPTER NO. 256

[SB 413]

AN ACT NAMING U.S. HIGHWAY 2 AS THE 163RD INFANTRY REGIMENT (SUNSET DIVISION) HERITAGE HIGHWAY.

WHEREAS, the 163rd Infantry Regiment has served Montana and this nation in war and in peace throughout the past 2 centuries; and

WHEREAS, the year 2003 is the occasion of the 60th anniversary of the 163rd Infantry Regiment's heroic efforts to help the allied forces win the Battle of Sanananda in World War II in the Southwest Pacific, a battle recognized as the first major land victory against the Japanese forces; and

WHEREAS, the 163rd Infantry Regiment was ordered into active duty on September 16, 1940, with a force of 1,700 men, including nearly 200 representatives of Montana tribes, and after training for 1 year became part of the initial American forces ordered into duty in the Pacific theater when the United States entered World War II in December 1941; and

WHEREAS, the 163rd Infantry Regiment earned numerous citations and letters of appreciation from Army headquarters during and after World War II, in particular for what General Jacob Devers referred to as "76 days of unrelieved fighting, a record in jungle warfare", as the 163rd Infantry Regiment and the 41st Infantry Division to which it was assigned carried on a 1,000-mile campaign in the jungles of New Guinea; and

WHEREAS, the 163rd Infantry Regimental combat team served as one of the initial occupation forces in Japan after World War II until being demobilized and sent home in January 1946; and

WHEREAS, the 163rd Infantry Regimental combat team upon its return to Montana became a major element of Montana's National Guard, serving as the basis for the Montana Army and Air National Guard, which continue to serve Montana today; and

WHEREAS, the 163rd Infantry Regimental combat team and its successor organizations, the 163rd Armored Cavalry Regiment and the 163rd Armored Brigade and current units, recruited along U.S. Highway 2 among Montana's Hi-Line communities of Bainville, Poplar, Wolf Point, Glasgow, Malta, Harlem, Chinook, Shelby, Havre, Whitefish, Kalispell, and Libby and on the Fort Peck, Rocky Boy, Fort Belknap, and Blackfeet Reservations; and

WHEREAS, the 163rd Infantry Regiment is the successor to volunteer troops that started with the Montana Territorial Volunteers, who served from 1867 to 1887, and proceeded to the First Montana Infantry Regiment, the Montana National Guard formed in March 1887, which became the First Montana Infantry Regiment, United States Volunteers, which was formed to fight in the Spanish-American and Philippine-American Wars in 1898-1899 and which later became the 2nd Montana Infantry, which provided emergency services for Montana before being activated to serve on the U.S.-Mexican Border in 1916 and then was redesignated as the 163rd Infantry Regiment prior to being called to duty in World War I in 1917-1919; and

WHEREAS, the cities and towns of the Hi-Line and the rest of Montana are extremely proud of the services of the 163rd Infantry Regiment; and

WHEREAS, more than 100,000 Montanans have served or are currently serving in units associated with the 163rd Infantry Regiment and deserve recognition for their accomplishments in serving the state and the country.

Be it enacted by the Legislature of the State of Montana:

Section 1. 163rd Infantry Regiment (Sunset Division) heritage highway. (1) U.S. highway 2 from the eastern border to the western border of Montana, a distance of 670 miles, is established as the 163rd Infantry Regiment (Sunset Division) heritage highway.

(2) The department of transportation shall provide appropriate markers to recognize the new name of the highway.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Approved April 8, 2003

CHAPTER NO. 257

[HB 323]

AN ACT REVISING LAWS GOVERNING REGISTERED MARKS AND TRADEMARKS TO CONFORM TO RECENT CHANGES IN THE MODEL

ACT; DEFINING THE TERMS "ABANDONED", "DILUTION", AND "USE"; REVISING THE DEFINITIONS OF "SERVICE MARK" AND "TRADEMARK"; REVISING THE CONTENT OF THE APPLICATION FOR REGISTRATION; REVISING REQUIREMENTS FOR THE FILING OF APPLICATIONS; REVISING THE REQUIREMENTS FOR CERTIFICATES OF REGISTRATION; REVISING THE DURATION AND RENEWAL OF CERTIFICATES OF REGISTRATION; REVISING LAWS GOVERNING ASSIGNMENTS AND CHANGE OF NAME; REVISING LAWS GOVERNING CANCELLATION OF REGISTRATION; REPLACING THE STATUTORY LIST OF CLASSIFICATIONS OF GOODS AND SERVICES WITH RULES ADOPTED BY THE SECRETARY OF STATE TO CONFORM TO CLASSIFICATIONS ADOPTED BY THE UNITED STATES PATENT AND TRADEMARK OFFICE; REVISING LAWS ON INJURY TO BUSINESS REPUTATION AND DILUTION; PROVIDING FOR TREBLE DAMAGES AND ATTORNEY FEES IN CASES INVOLVING THE COMMISSION OF WRONGFUL ACTS WITH KNOWLEDGE OR IN BAD FAITH; PROVIDING FOR A FORUM FOR ACTIONS INVOLVING REGISTRATION AND PROVIDING FOR SERVICE OF PROCESS ON THE SECRETARY OF STATE; ELIMINATING EXISTING PROVISIONS CONCERNING WHEN A MARK IS CONSIDERED USED, APPLICATIONS FOR RENEWAL OF REGISTRATION, CERTIFICATES OF ASSIGNMENT, PENALTIES FOR FALSE SWEARING, AND THE FILING OF FACSIMILE COPIES; AMENDING SECTIONS 30-13-301, 30-13-303, 30-13-311, 30-13-312, 30-13-313, 30-13-315, 30-13-317, 30-13-318, 30-13-331, 30-13-332, 30-13-333, 30-13-334, AND 30-13-335, MCA; REPEALING SECTIONS 30-13-302, 30-13-314, 30-13-316, 30-13-319, AND 30-13-341, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-301, MCA, is amended to read:

"30-13-301. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Abandoned" with respect to a mark, means the occurrence of either of the following:

(a) when a mark's use has been discontinued with intent not to resume use. Intent not to resume may be inferred from circumstances. Nonuse for 2 consecutive years constitutes prima facie evidence of abandonment.

(b) when any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

~~(1)~~(2) "Applicant" means the person filing an application for registration of a trademark mark under this part or the person's legal representatives, successors, or assigns.

(3) "Dilution" means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of:

(a) competition between the owner of the famous mark and other parties; or

(b) likelihood of confusion, mistake, or deception.

~~(2)~~(4) "Mark" means any trademark or service mark entitled to registration under this part whether registered or not.

~~(3)~~(5) "Person" means any individual, firm, partnership, limited liability company, corporation, association, union, or other organization *capable of suing and being sued in a court of law.*

~~(4)~~(6) "Registrant" means the person to whom the registration of a ~~trademark~~ mark under this part is issued or the person's legal representatives, successors, or assigns.

~~(5)~~(7) "Service mark" means ~~a mark used in the sale or advertising of services~~ any word, name, symbol, or device or any combination of words, names, symbols, or devices used by a person, to identify and distinguish the services of one person, including a unique service, and distinguish them from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they or the programs may advertise the goods of the sponsor.

~~(6)~~(8) "Trade name" means ~~a word, name, symbol, device, or any combination thereof~~ any name used by a person to identify the person's a business, or vocation, or occupation and distinguish it from the business, vocation, or occupation of others of that person.

~~(7)~~(9) "Trademark" means any word, name, symbol, device, or any combination thereof of words, names, symbols, or devices adopted and used by a person to identify and distinguish the goods made or sold by the of that person, including a unique product, and to distinguish them from goods made or those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

(10) "Use" means the bona fide use of a mark in the ordinary course of trade and not a use merely to reserve a right in a mark. For the purposes of this part, a mark is considered to be in use:

(a) (i) on goods when it is placed in any manner on the goods or other containers or the displays associated with the goods or on the tags or labels affixed to the goods or, if the nature of the goods makes placement on the goods or containers impracticable, when it is placed on documents associated with the goods or their sale; and

(ii) the goods are sold or transported in commerce in this state; and

(b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state."

Section 2. Section 30-13-303, MCA, is amended to read:

"30-13-303. Registrability. (1) A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others may not be registered if it:

(a) consists of or comprises immoral, deceptive, or scandalous matter; ~~or~~

(b) consists of or comprises matter ~~which~~ that may disparage or falsely suggest a connection with persons, living or dead, or institutions, beliefs, or national symbols or bring them into contempt or disrepute; ~~or~~

(c) consists of or comprises the flag or coat of arms or other insignia of the United States, of any state or municipality, or of any foreign nation or any simulation thereof of the flag or coat of arms of any of the enumerated entities; ~~or~~

(d) consists of or comprises the name, signature, or portrait of any living individual, except with ~~his~~ the individual's written consent; ~~or~~

(e) ~~comprises~~ *consists of* a mark that:

(i) when ~~applied to~~ *used on or in connection with* the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(ii) when ~~applied to~~ *used on or in connection with* the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them; or

(iii) is primarily merely a surname; or

(f) *consists of or* comprises a mark that so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

(2) ~~However, nothing in subsection~~ *Subsection (1)(e) prevents* ~~does not prevent~~ the registration of a mark used in this state by the applicant ~~which that~~ has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, ~~as applied to~~ *as used on or in connection with* the applicant's goods or services, proof of continuous use ~~thereof of the mark or service mark~~ as a mark by the applicant in this state or elsewhere for the 5 years ~~immediately preceding~~ *before* the date of the filing of the application for registration ~~on which the claim of distinctiveness is made.~~

Section 3. Section 30-13-311, MCA, is amended to read:

"30-13-311. Application for registration. (1) Subject to the limitations set forth in this part, a person who ~~adopts and~~ uses a mark ~~in this state~~ may file in the office of ~~the~~ secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for registration and:

(i) if a corporation, the state of incorporation; ~~or;~~

(ii) if a limited liability company, the state of organization;

(iii) *if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary of state;*

~~(b) the essential feature of the mark to be registered;~~

~~(c)~~ (b) the goods or services *on or* in connection with which the mark is used and the mode or manner in which the mark is used *on or* in connection with the goods or services and the class in which the goods or services fall;

~~(d)~~ (c) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or ~~the applicant's~~ a predecessor in business; *and*

~~(e) a statement that the mark is presently in use in this state by the applicant; and~~

~~(f)~~ (d) a statement that the applicant is the owner of the mark, *that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered the mark, either federally or in this state, or has the right to use the mark in this state either in the identical form or in a form that so nearly resembles it that it might be calculated to deceive or might be mistaken*

~~for it~~ the mark as to be likely, when applied to the goods or services of the other person, to cause confusion, to cause mistake, or to deceive.

(2) The secretary of state may require a statement as to whether an application to register the mark or portions or a composite of the mark has been filed by the applicant or a predecessor in interest in the United States patent and trademark office. If an application has been filed, the applicant shall provide complete information with respect to that filing, including the filing date and serial number of each application, the status of each application, and if any application was finally refused registration or has otherwise not resulted in a registration, the reasons for nonregistration.

(3) The secretary of state may require that a drawing of the mark, complying with requirements that the secretary of state may specify, accompany the application.

~~(2)~~(4) The application must be signed and verified by the applicant or a member of the firm or limited liability company or an officer of the corporation or association applying.

~~(3)~~(5) The application must be accompanied by ~~two copies of a specimen or facsimile of three specimens~~ showing the mark as actually used.

~~(4)~~(6) The application for registration must be accompanied by a filing fee as provided for in 30-13-320."

Section 4. Filing of applications. (1) Upon the filing of an application for registration and payment of the application fee, the secretary of state may cause the application to be examined for conformity with this part.

(2) The applicant shall provide any additional pertinent information requested by the secretary of state, including a description of a design mark, and may make or authorize the secretary of state to make amendments to the application that may be reasonably requested by the secretary of state or considered by the applicant to be advisable to respond to any rejection or objection.

(3) The secretary of state may require the applicant to disclaim an unregistrable component of a mark otherwise registrable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. A disclaimer may not prejudice or affect the applicant's or registrant's rights then existing or later arising in the disclaimed matter or the applicant's or registrant's rights of registration on another application if the disclaimed matter is or has become distinctive of the applicant's or registrant's goods or services.

(4) Amendments may be made by the secretary of state upon the application submitted by the applicant upon the applicant's agreement, or the secretary of state may require that a new application be submitted.

(5) If the applicant is found not to be entitled to registration, the secretary of state shall advise the applicant of that finding and of the reasons for the finding. The applicant must have a reasonable period of time, specified by the secretary of state, in which to reply or to amend the application. In the event of a reply or amended application, the application must be reexamined. This procedure may be repeated until:

(a) the secretary of state finally refuses registration of the mark; or

(b) the applicant fails to reply or amend the application within the specified period, in which case the application is considered abandoned.

(6) If the secretary of state finally refuses registration of the mark, the applicant may seek a writ of mandamus to compel registration. The writ may be granted, but without costs to the secretary of state, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.

(7) If applications are concurrently being processed by the secretary of state seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary of state shall grant priority to the applications in order of filing. If a prior application is granted a registration, the other application or applications must be rejected. A rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark in accordance with the provisions of 30-13-318.

Section 5. Section 30-13-312, MCA, is amended to read:

~~“30-13-312. Filing application and issuing certificate~~ *Certificate of registration.* (1) ~~One original and one copy of an application for registration of a mark must be delivered to the secretary of state. If the secretary of state finds that the application complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:~~

~~(a) endorse on the original and the copy the word “filed” and the month, day, and year of the filing thereof;~~

~~(b) file the original in his office; and~~

~~(c) issue a certificate of registration to which he shall affix the copy.~~

~~(2) The certificate of registration, together with the copy of the application for registration of mark affixed thereto, shall be returned. Upon compliance by the applicant with the requirements of this part, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration must be issued under the signature of the secretary of state and the seal of the state. The certificate must show:~~

~~(a) the name and business address of the person claiming ownership of the mark and, if a corporation, the state of incorporation or, if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary of state;~~

~~(b) the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state;~~

~~(c) the class of goods or services and a description of the goods or services on or in connection with which the mark is used;~~

~~(d) a reproduction of the mark; and~~

~~(e) the registration date and the term of the registration.~~

~~(3)(2) Any certificate of registration issued by the secretary of state under the provisions of this section or a copy thereof of the certificate duly certified by the secretary of state is admissible in evidence as competent and sufficient proof of the registration of such the mark in any judicial proceeding in any court of this state.”~~

Section 6. Section 30-13-313, MCA, is amended to read:

~~“30-13-313. Duration and renewal.~~ (1) Registration of a mark under this part is effective for a term of ~~10~~ 5 years from the date of registration, and upon application filed within 6 months prior to the expiration of ~~such~~ that term, in a

manner complying with the requirements of the secretary of state, the registration may be renewed for another ~~40~~ 5 years.

~~(2) An application for renewal of mark registration must be delivered to the secretary of state and shall set forth information including but not limited to the following:~~

- ~~(a) the name and business address of the applicant;~~
- ~~(b) a description of the mark; and~~
- ~~(c) a statement that the mark is still in use by the applicant in this state.~~

~~(3) The application for renewal of mark registration must be signed by the applicant.~~

~~(4)(2) The application for renewal of mark registration must be accompanied by a filing fee as provided for in 30-13-320.~~

~~(3) A registration may be renewed for successive periods of 5 years as provided in subsection (1).~~

~~(4) Any registration in force on [the effective date of this act] continues in full force and effect for the unexpired term of the registration and may be renewed by filing an application for renewal with the secretary of state complying with the requirements of the secretary of state and paying the renewal fee within 6 months prior to the expiration of the registration.~~

~~(5) All applications for renewal under this part must include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services."~~

Section 7. Section 30-13-315, MCA, is amended to read:

"30-13-315. Assignment — change of name — other instruments. (1) Any mark and its registration under this part may be assigned in conjunction with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark. *An assignment must be by written, duly executed instruments and may be recorded with the secretary of state upon the payment of the recording fee payable to the secretary of state. Upon recording the assignment, the secretary of state shall issue a new certificate in the name of the assignee* for the remainder of the term of the current registration. An assignment of any registration under this part is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within 3 months after the date of the assignment or prior to ~~such~~ the subsequent purchase.

~~(2) One original and one copy of an assignment of a mark must be delivered to the secretary of state and shall set forth information including but not limited to the following:~~

- ~~(a) the name and address of the assignor;~~
- ~~(b) the name and address of the assignee;~~
- ~~(c) the registration number of the mark; and~~
- ~~(d) the date of registration.~~

~~(3) The assignment of a mark must be signed and verified by the assignor.~~

~~(4) The assignment of a mark must be accompanied by a filing fee as provided for in 30-13-320.~~

(2) Any applicant or registrant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the applicant or registrant with the secretary of state upon the payment of the recording fee. The secretary of state may issue in the name of the assignee a certificate of registration of an assigned application. The secretary of state may issue, in the name of the assignee, a new certificate of registration for the remainder of the term of the registration or last renewal of the registration.

(3) Other instruments that relate to a mark registered or an application pending pursuant to this part, such as licenses, security interests, or mortgages, may be recorded at the discretion of the secretary of state if the instrument is in writing and is duly executed.

(4) An acknowledgment is prima facie evidence of the execution of an assignment or other instrument, and when recorded by the secretary of state, the record is prima facie evidence of execution.

(5) A photocopy of any instrument referred to in subsections (1) through (3) must be accepted for recording if it is certified by any of the parties to the instrument or their successors to be a true and correct copy of the original."

Section 8. Section 30-13-317, MCA, is amended to read:

"30-13-317. Records. The secretary of state shall keep for public examination a record of all marks registered or renewed under this part as well as a record of all documents recorded pursuant to 30-13-315."

Section 9. Section 30-13-318, MCA, is amended to read:

"30-13-318. Cancellation. The secretary of state shall cancel from the register, *in whole or in part*:

~~(1) after July 1, 1981, each registration made prior to July 1, 1980, that is more than 10 years old and not renewed in accordance with this part;~~

~~(2)(1) any registration for concerning which he the secretary of state receives a written voluntary request for cancellation, signed and verified by from the registrant or the assignee of record and accompanied by fees as prescribed in this part;~~

~~(3)(2) each registration granted under this part and not renewed in accordance with the provisions of this part;~~

~~(4)(3) any registration concerning which a court of competent jurisdiction finds that:~~

- ~~(a) the registered mark has been abandoned;~~
- ~~(b) the registrant is not the owner of the mark;~~
- ~~(c) the registration was granted improperly;~~
- ~~(d) the registration was obtained fraudulently;~~

~~(e) the mark is or has become the generic name for the goods or services or a portion of the goods or services for which it has been registered;~~

~~(e)(f) the registered mark is so similar to a mark currently registered by another person in the United States patent and trademark office prior to the filing date of the application for registration under this part as to be likely to cause confusion or mistake or to deceive. However, if the registrant proves that he the registrant is the owner of a concurrent registration of his a mark in the~~

United States patent and trademark office covering an area including this state, the registration under this part may not be canceled.

~~(5)~~(4) a registration *that is* ordered *to be* canceled by a court of competent jurisdiction on any grounds.”

Section 10. Section 30-13-331, MCA, is amended to read:

“30-13-331. Classification. ~~(1) The following general classes~~ *secretary of state shall adopt rules establishing a classification of goods and services* ~~are established~~ for convenience of administration of this part. ~~This~~ *The* classification does not limit or extend the applicant’s or registrant’s rights. A single application for registration of a mark may include any or all goods *upon which* or services ~~comprised in a single class with regard to~~ *with* which the mark is actually being used *indicating the appropriate class or classes of goods or services.* ~~However, in no event may~~ *When a single application include includes* goods or services that fall within ~~different~~ *multiple* classes, ~~of goods or services~~ *the secretary of state may require payment of a fee for each class. To the extent practical, the classification of goods and services must conform to the classification adopted by the United States patent and trademark office.*

~~(2) The classes of goods are as follows:~~

- ~~(a) raw or partly prepared materials;~~
- ~~(b) receptacles;~~
- ~~(c) baggage, animal equipments, portfolios, and pocketbooks;~~
- ~~(d) abrasive and polishing materials;~~
- ~~(e) adhesives;~~
- ~~(f) chemicals and chemical compositions;~~
- ~~(g) cordage;~~
- ~~(h) smokers’ articles, not including tobacco products;~~
- ~~(i) explosives, firearms, equipment, and projectiles;~~
- ~~(j) fertilizers;~~
- ~~(k) inks and inking materials;~~
- ~~(l) construction materials;~~
- ~~(m) hardware and plumbing and steamfitting supplies;~~
- ~~(n) metals and metal casting and forgings;~~
- ~~(o) oils and greases;~~
- ~~(p) paints and painters’ materials;~~
- ~~(q) tobacco products;~~
- ~~(r) medicines and pharmaceutical preparations;~~
- ~~(s) vehicles;~~
- ~~(t) linoleum and oil cloth;~~
- ~~(u) electrical apparatus, machines, and supplies;~~
- ~~(v) games, toys, and sporting goods;~~
- ~~(w) cutlery, machinery, and tools, and parts thereof;~~
- ~~(x) laundry appliances and machines;~~
- ~~(y) locks and safes;~~

- ~~(z) measuring and scientific appliances;~~
- ~~(aa) horological instruments;~~
- ~~(bb) jewelry and precious metal ware;~~
- ~~(cc) brooms, brushes, and dusters;~~
- ~~(dd) crockery, earthenware, and porcelain;~~
- ~~(ee) filters and refrigerators;~~
- ~~(ff) furniture and upholstery;~~
- ~~(gg) glassware;~~
- ~~(hh) heating, lighting, and ventilating apparatus;~~
- ~~(ii) belting, hose, machinery packing, and nonmetallic tires;~~
- ~~(jj) musical instruments and supplies;~~
- ~~(kk) paper and stationery;~~
- ~~(ll) prints and publications;~~
- ~~(mm) clothing;~~
- ~~(nn) fancy goods, furnishings, and notions;~~
- ~~(oo) canes, parasols, and umbrellas;~~
- ~~(pp) knitted, netted, and textile fabrics, and substitutes therefor;~~
- ~~(qq) thread and yarn;~~
- ~~(rr) dental, medical, and surgical appliances;~~
- ~~(ss) soft drinks and carbonated waters;~~
- ~~(tt) foods and ingredients of foods;~~
- ~~(uu) wines;~~
- ~~(vv) malt beverages and liquors;~~
- ~~(ww) distilled alcoholic liquors;~~
- ~~(xx) merchandise not otherwise classified;~~
- ~~(yy) cosmetics and toilet preparations;~~
- ~~(zz) detergents and soaps.~~
- ~~(3) The classes of services are as follows:~~
 - ~~(a) miscellaneous;~~
 - ~~(b) advertising and business;~~
 - ~~(c) insurance and financial;~~
 - ~~(d) construction and repair;~~
 - ~~(e) communications;~~
 - ~~(f) transportation and storage;~~
 - ~~(g) material treatment;~~
 - ~~(h) education and entertainment.”~~

Section 11. Section 30-13-332, MCA, is amended to read:

“30-13-332. Fraudulent registration. Any person who, for ~~himself~~ *the person's own sake* or on behalf of any other person, procures the filing or registration of any mark in the office of the secretary of state under the

provisions of this part by knowingly making any false or fraudulent representation or *declaration*, verbally or in writing or by any other fraudulent means, is liable to pay all damages sustained in consequence of ~~such~~ the filing or registration. ~~Such damages~~ Damages may be recovered by or on behalf of the injured party in any court of competent jurisdiction.”

Section 12. Section 30-13-333, MCA, is amended to read:

“30-13-333. Infringement. (1) Subject to the provisions of 30-13-336 and subsection (2) of this section, ~~any~~ a person is liable in a civil action brought by the lawful owner of a registered mark registrant under 30-13-335 if ~~such~~ the person:

(a) uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this part in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which ~~such~~ the use is likely to cause confusion or mistake or to deceive as to the source of origin of ~~such~~ the goods or services; or

(b) reproduces, counterfeits, copies, or colorably imitates any ~~such~~ registered mark and applies ~~such~~ the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of ~~such~~ the goods or services.

(2) However, the registrant is not entitled to recover under subsection (1)(b) any profits or damages unless the acts have been committed with knowledge that ~~such~~ the mark is intended to be used to cause confusion or mistake or to deceive.”

Section 13. Section 30-13-334, MCA, is amended to read:

“30-13-334. Injury to business reputation — dilution. (1) ~~Likelihood of injury to business reputation or of~~ The owner of a mark that is famous in this state is entitled, subject to the principles of equity and upon terms that seem reasonable to the court, to an injunction against another person’s commercial use of a mark or trade name if the use begins after the mark has become famous and causes dilution of the distinctive quality of a the mark registered under this part or a mark valid at common law or a trade name valid at common law is grounds for injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services and may obtain other relief as provided in this section.

(2) In determining whether a mark is distinctive and famous, a court may consider factors including but not limited to:

(a) the degree of inherent or acquired distinctiveness of the mark in this state;

(b) the duration and extent of use of the mark in connection with the goods and services with which the mark is used;

(c) the duration and extent of advertising and publicity of the mark in this state;

(d) the geographical extent of the trading area in which the mark is used;

(e) the channels of trade for the goods or services with which the mark is used;

(f) the degree of recognition of the mark in the trading areas and channels of trade in this state used by the mark’s owner and the person against whom the injunction is sought;

(g) the nature and extent of use of the same or similar mark by third parties; and

(h) whether the mark is the subject of a registration in this state or a federal registration under the act of March 3, 1881, or under the act of February 20, 1905, or on the principal register.

(3) In an action brought under this section, the owner of a famous mark is entitled only to injunctive relief in this state unless the person against whom the injunctive relief is sought willfully intended to trade on the owner's reputation or to cause dilution of the famous mark. If a willful intent is proven, the owner is also entitled to the remedies set forth in this part, subject to the discretion of the court and the principles of equity.

(4) The following are not actionable under this section:

(a) fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark;

(b) noncommercial use of the mark; or

(c) all forms of news reporting and news commentary."

Section 14. Section 30-13-335, MCA, is amended to read:

"30-13-335. Remedies. (1) ~~Any~~ An owner of a mark registered under this part may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark. Any court of competent jurisdiction may grant injunctions to restrain ~~such~~ the manufacture, use, display, or sale as is considered by the court to be just and reasonable. The court may require the defendants to pay to ~~such~~ the owner all profits derived from ~~and/or~~ and all damages suffered by reason of ~~such~~ the wrongful manufacture, use, display, or sale. The court may also order that any ~~such~~ counterfeits or imitations in the possession or under the control of any defendant in ~~such~~ the case be delivered to an officer of the court or to the complainant to be destroyed. *The court, in its discretion, may enter judgment for an amount not to exceed three times the profits and damages and reasonable attorney fees of the prevailing party in cases in which the court finds that the other party committed the wrongful acts with knowledge, in bad faith, or otherwise as according to the circumstances of the case.*

(2) The enumeration in this part of any right or remedy does not affect a registrant's right to prosecute under any criminal law of this state."

Section 15. Forum for actions regarding registration — service on out-of-state registrants. (1) Actions to require cancellation of a mark registered pursuant to this part or in mandamus to compel registration of a mark pursuant to this part must be brought in district court. In an action in mandamus, the proceeding must be based solely upon the record before the secretary of state. In an action for cancellation, the secretary of state may not be made a party to the proceeding but must be notified of the filing of the complaint by the clerk of the court in which the action is filed and must be given the right to intervene in the action.

(2) In any action brought against a nonresident registrant, service may be effected upon the secretary of state as agent for service of the registrant in accordance with the procedures established for service upon nonresident corporations and business entities under Rule 4D of the Montana Rules of Civil Procedure.

Section 16. Repealer. Sections 30-13-302, 30-13-314, 30-13-316, 30-13-319, and 30-13-341, MCA, are repealed.

Section 17. Codification instruction. [Sections 4 and 15] are intended to be codified as an integral part of Title 30, chapter 13, part 3, and the provisions of Title 30, chapter 13, part 3, apply to [sections 4 and 15].

Section 18. Effective date. [This act] is effective July 1, 2003.

Approved April 9, 2003

CHAPTER NO. 258

[HB 389]

AN ACT PROVIDING THAT WHEN A JUDGE IMPOSES A TERM OF INCARCERATION IN A STATE PRISON, THE DEPARTMENT OF CORRECTIONS SHALL DESIGNATE THE STATE PRISON IN WHICH THE PERSON WILL BE PLACED; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(c) a term of incarceration, *as provided in Title 45 for the offense*, at a county detention center or at a state prison, ~~as provided in Title 45, for the offense to be designated by the department of corrections;~~

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of court-appointed counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any penalties imposed pursuant to subsection (1), if the sentencing judge finds that the victim of the offense has sustained a pecuniary loss, the sentencing judge shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

(6) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(7) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to persons sentenced on or before [the effective date of this act].

Approved April 9, 2003

CHAPTER NO. 259

[HB 496]

AN ACT INCLUDING INJUNCTIONS OR OTHER COURT ORDERS UNDER SEXUAL ASSAULT OR STALKING LAWS IN THE DEFINITION OF "PROTECTION ORDER" FOR PURPOSES OF THE UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT; AMENDING SECTIONS 40-15-402 AND 40-15-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-15-402, MCA, is amended to read:

"40-15-402. Definitions. As used in this part, the following definitions apply:

(1) "Foreign protection order" means a protection order issued by a court of another state.

(2) "Issuing state" means the state whose court issues a protection order.

(3) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(4) "Protected individual" means an individual protected by a protection order.

(5) "Protection order" means an injunction or other order issued by a court under the domestic violence, ~~or~~ family violence, *sexual assault, or stalking* laws of the issuing state to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual.

(6) "Respondent" means the individual against whom enforcement of a protection order is sought.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders."

Section 2. Section 40-15-403, MCA, is amended to read:

"40-15-403. Judicial enforcement of order. (1) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a court of this state. The court shall enforce the terms of the order, including terms that provide relief that a court of this state would lack power to provide but for this section. The court shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the court shall follow the procedures of this state for the enforcement of protection orders.

(2) A court of this state may not enforce a foreign protection order issued by a court of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(3) A court of this state shall enforce the provisions of a valid foreign protection order that govern custody and visitation if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(4) A court of this state may not enforce under this part a provision of a foreign protection order with respect to support.

(5) A foreign protection order is valid if it:

(a) identifies the protected individual and the respondent;

(b) is currently in effect;

(c) was issued by a court that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(d) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the court issued the order or, in the case of an order *ex parte*, the respondent was given notice and had *an opportunity to be heard before the order was issued or had* an opportunity to be heard within a reasonable time after the order was issued, consistent with the rights of the respondent to due process.

(6) A foreign protection order valid on its face is *prima facie* evidence of its validity.

(7) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(8) A court of this state may enforce provisions of a mutual foreign protection order that favor a respondent only if:

(a) the respondent filed a written pleading seeking a protection order from the court of the issuing state; and

(b) the court of the issuing state made specific findings in favor of the respondent."

Section 3. Effective date. [This act] is effective on passage and approval.
Approved April 9, 2003

CHAPTER NO. 260

[HB 507]

AN ACT REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF LABOR AND INDUSTRY ADOPT RULES TO IMPLEMENT AND PREVENT CIRCUMVENTION OR EVASION OF THE CHILD LABOR STANDARDS ACT; MAKING THE ADOPTION OF RULES PERMISSIVE; AMENDING SECTION 41-2-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-2-117, MCA, is amended to read:

“41-2-117. Power to adopt rules. The department ~~shall~~ may adopt rules, including definitions of terms, to carry out the purposes of this part and to prevent the circumvention or evasion of this part.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2003

CHAPTER NO. 261

[HB 686]

AN ACT REVISING THE PROVISIONS OF THE DEFERRED RETIREMENT OPTION PLAN IN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; PROVIDING FOR RETROACTIVE PARTICIPATION IN THE DEFERRED RETIREMENT OPTION PLAN FOR CERTAIN MEMBERS; AMENDING SECTION 19-9-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-1204, MCA, is amended to read:

“19-9-1204. Eligibility — participation criteria — membership status — service interruptions. (1) Any member eligible to retire under 19-9-801 ~~(2)~~ (1) is eligible and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant remains a member of the retirement system, but may not receive membership service or service credit in the system for the duration of the member's DROP period.

(5) If participation is interrupted by military service or disability and the participant has not received any distribution from the DROP, then the duration of the absence may not be included in calculating the DROP period.

(6) *Subject to the provisions of this section, a member who was eligible to retire under 19-9-801(1) on or after July 1, 2002, but before July 1, 2003, and who elects to participate in the DROP on or before October 1, 2003, may include within the member's DROP period any time during the period beginning July 1, 2002, and ending June 30, 2003.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to active members of the municipal police officers' retirement system who were eligible to retire under 19-9-801(1) on or after July 1, 2002, but before July 1, 2003.

Approved April 9, 2003

CHAPTER NO. 262

[HB 731]

AN ACT PROVIDING AN INCREASED PENSION BENEFIT TO MEMBERS UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT WHO HAVE COMPLETED MORE THAN 20 YEARS OF SERVICE; AMENDING SECTIONS 19-17-401 AND 19-17-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-17-401, MCA, is amended to read:

"19-17-401. Eligibility for pension and disability benefits. (1) To qualify for a full pension, partial pension, ~~and~~ or disability ~~benefits~~ benefit under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).

(2) (a) For a full pension ~~benefits~~ benefit, a member must have completed ~~at least 20 years'~~ years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 ~~years'~~ years of service may qualify for a partial pension ~~benefits~~ benefit if the member has completed at least 10 ~~years'~~ years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(4) Except as provided in subsection (5):

(a) to receive a pension or disability benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension or disability benefit under this chapter may not become an active member of any fire company.

(5) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters'

pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.”

Section 2. Section 19-17-404, MCA, is amended to read:

“19-17-404. Amount of pension and disability benefits. (1) ~~(a)~~ Each eligible member must receive a pension ~~and~~ or disability ~~benefits~~ benefit as provided in this section.

~~(b)(2)~~ ~~(a)~~ ~~The base~~ Except as provided in subsection (2)(c), the full pension benefit paid to eligible members is \$150 a month ~~for members who are eligible for full pension benefits.~~

~~(c)(b)~~ ~~Partial~~ A partial pension ~~benefits~~ ~~are~~ benefit is calculated by multiplying the full pension benefit in subsection ~~(1)(b)~~ (2)(a) by a fraction, the numerator of which is the eligible member's years of service and the denominator of which is 20.

(c) The full pension benefit of a member who has completed 20 years of service and is at least 55 years of age and who continues to be an active member must be increased by \$7.50 a month for each additional year of active service up to 30 total years of service.

~~(2)(3)~~ (3) The disability benefit paid to an eligible ~~members~~ member is calculated in the same manner as partial pension benefits described in subsection ~~(1)(c)~~ (2)(b), except that the numerator may not be less than 10.

~~(3)(4)~~ (4) If any fraudulent change or any inadvertent mistake in records results in any member, surviving spouse, or dependent child receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, surviving spouse, or dependent child in an equitable manner.”

Section 3. Effective date. [This act] is effective July 1, 2003.

Approved April 9, 2003

CHAPTER NO. 263

[SB 22]

AN ACT AMENDING THE MONTANA AGRICULTURAL SEED LAWS TO ESTABLISH NEW LICENSING AND ASSESSMENT FEES, TO ESTABLISH MINIMUM AND MAXIMUM LICENSING AND ASSESSMENT FEES, AND TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO ADJUST THESE FEES BY RULE; AMENDING SECTIONS 80-5-130 AND 80-5-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-5-130, MCA, is amended to read:

“80-5-130. Licensing — application — fee. (1) All facilities located in the state that condition agricultural seed shall obtain a license from the department for each facility. However, a seed grower, when conditioning only seed from that grower's own production, is not required to be licensed under this part.

(2) Each seed conditioning plant ~~must~~ shall post in a conspicuous location in the facility:

- (a) its fees for conditioning services; and
- (b) the license for the facility.

(3) A person whose name and address appear on the label of agricultural seed sold in Montana, as required by 80-5-123, shall obtain a seed labeler's license from the department before doing business in Montana. The following persons, however, are excluded from the licensing requirements under this subsection:

(a) a Montana certified seed grower when labeling certified seed from that grower's own production;

(b) any person who updates germination test data by affixing to the package of seed a supplemental label bearing new germination data, the lot number, and the person's name and address; or

(c) a Montana grower who labels seed only of that labeler's own production with a gross annual sales value of \$5,000 or less.

(4) A person who sells agricultural seed in Montana shall obtain a seed dealer's license from the department for each place where seed is located or sold, except for:

(a) a person who sells seed only in sealed packages of 10 pounds or less;

(b) a person who sells seed that has a gross sales value of \$1,000 or less a year;

(c) a person who sells seed only to a Montana-licensed seed dealer, labeler, or conditioner; or

(d) a Montana grower selling only seed of that grower's own production with a gross annual sales value of \$5,000 or less.

(5) ~~Each type of license for an in-state person costs \$50 a year. Except as provided in this subsection (5), the fee is \$55 a year for each type of license. The department may by rule adjust the license fee by type of license to maintain adequate funding for the administration of this part. The fee may not be less than \$55 a year or more than \$75 a year.~~

(b) ~~The~~ *Except as provided in this subsection (5)(b), the license fee for an out-of-state person selling seed in Montana is \$100 \$110 a year. The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than \$110 a year or more than \$150 a year.*

~~(c) The license fee for an out-of-state person who labels seed that is being sold in Montana is \$50 a year.~~

~~(d) The license fee for a person who sells only lawn and turf grass seed is \$50 a year.~~

~~(e)(c) The~~ *Except as provided in this subsection (5)(c), the license fee for a Montana grower who sells, or labels, or sells and labels only seed of that grower's own production is \$50 \$55 a year. The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than \$55 a year or more than \$75 a year.*

(6) An application for a license under this section must be made in a manner and on forms provided by the department. The application must contain ~~among other things:~~

- (a) the location of each seed conditioning plant if the application is for a seed conditioning plant license;
 - (b) a sample label if the application is for a seed labeler license; and
 - (c) a list of persons selling seed if required by department rule.
- (7) Seed dealers shall provide with all shipments of agricultural seed a bill of lading or other evidence of delivery that includes:
- (a) the names of:
 - (i) the seed dealer;
 - (ii) the shipper, if other than the seed dealer;
 - (iii) the buyer; and
 - (iv) the receiver, if other than the buyer; and
 - (b) the destination where the seed will be first unloaded.”

Section 2. Section 80-5-131, MCA, is amended to read:

“80-5-131. Assessment on sales into Montana — reporting — rulemaking. (1) ~~Seed~~ *Except as provided in this subsection, seed* labelers located outside Montana who sell agricultural seed in Montana shall report those sales and pay a fee of ~~15~~ 20 cents per \$100 in gross annual sales of agricultural seed. *The department may by rule adjust the assessment fee to maintain adequate funding for the administration of this part. The assessment fee may not be less than 20 cents per \$100 or more than 30 cents per \$100 in gross annual sales of agricultural seed.*

(2) The department shall by rule establish:

- (a) reporting requirements, including persons who shall report, the form of reports, and the scope of information to be reported;
- (b) the due date applicable to reports; and
- (c) penalty provisions applicable to reports that are not received by the due date, not to exceed \$10 or 10% of the assessment due, whichever is greater.

(3) Failure to submit the report as required or to pay the assessment in full constitutes a violation subject to the penalty provisions of this chapter.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2003

CHAPTER NO. 264

[SB 24]

AN ACT ALLOWING A COUNTY OR MUNICIPALITY TO CHARGE A CONVENIENCE FEE FOR PROVIDING ELECTRONIC GOVERNMENT SERVICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Convenience fee for electronic county government services. (1) The county may charge a convenience fee and may allow county departments to collect the convenience fee on selected electronic government services in order to provide funding for the support and furtherance of electronic government services.

(2) As used in this section, "convenience fee" means a fee charged to recover the costs of providing electronic government services.

Section 2. Convenience fee for electronic municipal government services. (1) The municipality may charge a convenience fee and may allow municipal departments to collect the convenience fee on selected electronic government services in order to provide funding for the support and furtherance of electronic government services.

(2) As used in this section, "convenience fee" means a fee charged to recover the costs of providing electronic government services.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 21, and the provisions of Title 7, chapter 5, part 21, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 5, part 41, and the provisions of Title 7, chapter 5, part 41, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2003

CHAPTER NO. 265

[SB 85]

AN ACT REQUIRING THE LEGISLATIVE COUNCIL TO REVIEW PROPOSED LEGISLATION FOR AGENCIES OR ENTITIES THAT ARE NOT ASSIGNED TO AN INTERIM COMMITTEE OR THE ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING 5-11-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-11-105, MCA, is amended to read:

"5-11-105. Powers and duties of council. (1) The legislative council shall:

(a) employ and, in accordance with the rules for classification and pay established as provided in this section, set the salary of an executive director of the legislative services division, who serves at the pleasure of and is responsible to the legislative council;

(b) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules for classification and pay of legislative branch employees, other than those of the office of consumer counsel;

(c) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules governing personnel management of branch employees, other than those of the office of consumer counsel;

(d) adopt procedures to administer legislator claims for reimbursements authorized by law for interim activity;

(e) establish time schedules and deadlines for the interim committees of the legislature, including dates for requesting bills and completing interim work;

(f) review proposed legislation for agencies or entities that are not assigned to an interim committee, as provided in 5-5-223 through 5-5-228, or to the environmental quality council, as provided in 75-1-324; and

(g) perform other duties assigned by law.

(2) If a question of statewide importance arises when the legislature is not in session and a legislative interim committee has not been assigned to consider the question, the legislative council shall assign the question to an appropriate interim committee, as provided in 5-5-202, or to the appropriate statutorily created committee.”

Approved April 9, 2003

CHAPTER NO. 266

[SB 133]

AN ACT AUTHORIZING THE DEPARTMENT OF CORRECTIONS, RATHER THAN THE YOUTH COURT JUDGE, TO SELECT AND APPOINT THE JUVENILE PAROLE OFFICER REPRESENTATIVE ON YOUTH PLACEMENT COMMITTEES; AND AMENDING SECTION 41-5-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-121, MCA, is amended to read:

“41-5-121. Youth placement committees — composition. (1) In each judicial district, the youth court *and the department* shall establish a youth placement committee for the purposes of:

(a) recommending an appropriate placement of a youth referred to the youth court or the department under 41-5-1512 and 41-5-1513; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the custody of the department under 41-5-1512 or 41-5-1513. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility.

(2) (a) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth.

(b) The committee must include:

(i) a juvenile parole officer employed by the department;

(ii) a representative of the department of public health and human services;

(iii) the chief probation officer or the chief probation officer’s designee, who is the presiding officer of the committee;

(iv) a mental health professional; and

(v) if an Indian youth is involved, a person, preferably an Indian, knowledgeable about Indian culture and Indian family matters.

(c) The committee may include:

(i) a representative of a school district located within the boundaries of the judicial district who has knowledge of and experience with youth;

(ii) the youth’s parent or guardian;

(iii) a youth services provider; and

(iv) the youth’s probation officer.

(3) *The youth court judge shall appoint all members of the youth placement committee except the juvenile parole officer. The director of the department shall appoint the juvenile parole officer and shall, when making the appointment, take into consideration:*

(a) *the juvenile parole officer's qualifications;*

(b) *the costs involved in the juvenile parole officer's attendance at youth placement committee meetings; and*

(c) *the location of the juvenile parole officer's home in relation to the location of the youth placement committee.*

~~(3)~~(4) *Committee members serve without compensation.*

~~(4)~~(5) *Notwithstanding the provisions of 41-5-123, the committee may be convened by the department or the probation officer of the youth court.*

~~(5)~~(6) *If a representative of the school district within the boundaries of which the youth is recommended to be placed and will be attending school is not included on the committee, the person who convened the committee shall inform the school district of the final placement decision for the youth.*

~~(6)~~(7) *The department may not disburse funds from the budget allocation accounts established pursuant to 41-5-130 unless the youth court ~~has~~ and the department have established a youth placement committee as provided in this section."*

Approved April 9, 2003

CHAPTER NO. 267

[SB 162]

AN ACT CONFORMING MONTANA UNEMPLOYMENT INSURANCE LAW WITH FEDERAL LAW BY EXCLUDING A "NO-ADDITIONAL-COST SERVICE" FROM WAGES FOR STATE UNEMPLOYMENT INSURANCE TAX PURPOSES; DEFINING "NO-ADDITIONAL-COST SERVICE"; AMENDING SECTION 39-51-201, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the

disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization (including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit), partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding subsection (17)(a), all universities in this state are institutions of higher education for purposes of this part.

(18) "*No-additional-cost service*" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

~~(18)~~ (19) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

~~(19)~~ (20) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

~~(20)~~ (21) "Tribal unit" means an Indian tribe and any subdivision, subsidiary, or business enterprise that is wholly owned by that tribe.

~~(21)~~ (22) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

~~(22)~~ (23) (a) "Wages", unless specifically exempted under subsection ~~(22)(b)~~ (23)(b), means all remuneration payable for personal services, including the

cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

- (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;
- (ii) severance or continuation pay, backpay, and 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; and
- (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family; ~~or~~

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules; or

(iii) a no-additional-cost service.

~~(23)~~ (24) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(24)~~ (25) An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Effective date — applicability. [This act] is effective July 1, 2003, and applies to tax periods beginning on or after July 1, 2003.

Approved April 9, 2003

CHAPTER NO. 268

[SB 163]

AN ACT ALLOWING THE PAYMENT OF TAXES AND FEES TO LOCAL GOVERNMENT ENTITIES BY CREDIT CARD OR OTHER COMMERCIALY ACCEPTABLE MEANS; PROVIDING THAT THE PAYMENT IS NOT CONSIDERED MADE UNTIL THE LOCAL GOVERNMENT ENTITY RECEIVES ITS PAYMENT FROM THE FINANCIAL INSTITUTION OR CREDIT CARD COMPANY; ALLOWING THAT A FEE BE CHARGED UPON NOTICE OF NONPAYMENT; IMPOSING A CONVENIENCE FEE ON A PERSON PAYING BY CREDIT CARD OR

OTHER COMMERCIALLY ACCEPTABLE MEANS; ALLOWING LOCAL GOVERNMENT ENTITIES TO ENTER INTO ANY NECESSARY AGREEMENTS WITH FINANCIAL INSTITUTIONS, CREDIT CARD COMPANIES, AND STATE AGENCIES; SPECIFYING THAT FEES PAID TO FINANCIAL INSTITUTIONS OR CREDIT CARD COMPANIES MUST BE PAID FROM AN APPROPRIATE FUND OF A LOCAL GOVERNMENT ENTITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Payment of fees and taxes by credit card and other commercially acceptable means. (1) A local government entity may accept payment by credit card, debit card, charge card, or other commercially acceptable means from a person making payment to the entity of taxes or fees that are legally authorized and imposed.

(2) (a) If the payment is made by credit card, debit card, charge card, or similar method, the tax or fee liability is not discharged and the person has not paid the tax or fee until the local government entity receives payment or credit from the institution responsible for making the payment or credit. Upon receipt of the payment or credit, the amount is considered paid on the date on which the charge was made by the person paying the tax or fee.

(b) Upon notice of nonpayment, the local government entity may charge the person who attempted the payment of the tax or fee an amount not to exceed the costs of processing the claim for payment of the tax or fee. The amount that the local government entity charges must be added to the tax or fee due and collected in the same manner as the tax or fee due.

(3) (a) A person who makes payments to a local government entity as provided in this section may be required to pay a convenience fee of up to 3% of the amount of the payment.

(b) The local government entity shall deposit the convenience fees collected in the appropriate fund.

(4) (a) The local government entity may negotiate and enter into agreements with and pay required fees to financial institutions or credit card companies as necessary to facilitate implementation of this section.

(b) A financial institution or credit card company may not prohibit collection of the convenience fee provided for in subsection (3).

(c) Fees paid to a financial institution or credit card company must be paid from an appropriate fund of the local government entity.

(5) A local government entity may enter into cooperative agreements with state agencies as necessary to carry out the provisions of this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, part 6, and the provisions of Title 7, chapter 6, part 6, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2003

CHAPTER NO. 269

[SB 197]

AN ACT CLARIFYING THAT A MAYOR MAY NOT REJECT OR REFUSE TO APPOINT TO THE CITY PLANNING BOARD A COUNTY REPRESENTATIVE WHO HAS BEEN DESIGNATED BY A BOARD OF COUNTY COMMISSIONERS; AND AMENDING SECTION 76-1-223, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-223, MCA, is amended to read:

"76-1-223. County representative for city planning board. ~~As seen as~~ *When a city council has enacted an ordinance creating a city planning board or when a vacancy occurs in the county's membership on the city planning board,* the board of county commissioners of the county ~~wherein in which~~ *in which* the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. ~~In the event of the failure of~~ *The mayor may not reject or refuse to appoint to the city planning board a representative designated by a board of county commissioners as provided in this section, but if the county fails to so designate such member, a representative, then the mayor may appoint as a representative of the county a person of his the mayor's own choosing and at his the mayor's sole discretion as a representative of the county."*

Approved April 9, 2003

CHAPTER NO. 270

[SB 213]

AN ACT INCREASING THE MAXIMUM WHEAT AND BARLEY ASSESSMENT COLLECTED BY THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 80-11-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-11-206, MCA, is amended to read:

"80-11-206. Maximum annual assessment on wheat and barley grown, delivered, or stored. (1) There is an annual assessment of not more than ~~10~~ 20 mills per bushel on all wheat and not more than ~~15~~ 30 mills per hundredweight on all barley grown, delivered, or stored in the state of Montana and sold through commercial channels.

(2) The assessment is levied and imposed:

(a) in the case of a sale of wheat or barley, at the time of first sale of any wheat or barley by a seller, and must be collected by the first purchaser of the wheat or barley from the seller at the time of each settlement for wheat or barley purchased;

(b) in the case of a pledge or mortgage of wheat or barley as security for a loan under any federal price support program other than the commodity credit corporation, and must be collected by deducting the amount of the assessment

from the proceeds of the loan at the time the loan is made by the agency or person making the loan; or

(c) in the case of wheat or barley pledged under the federal commodity credit corporation, and the assessment must be collected at the time of purchase, not at the time a lease or loan is made under the program.

(3) The assessment levied under the provisions of this part must be deducted and collected as provided by this part, whether the wheat or barley is stored in this or any other state. The assessment attaches to each transaction, but a seller is not subject to assessment more than once irrespective of the number of times the wheat or barley is the subject of a sale, pledge, mortgage, or other transaction. The assessment is imposed and attaches on the initial sale, pledge, mortgage, or other transaction in which the wheat or barley seller parts with title to the wheat or barley or creates some interest in the wheat or barley in a pledgee, mortgagee, or other person.”

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2003

CHAPTER NO. 271

[HB 285]

AN ACT REVISING LAWS RELATED TO MILITARY STATUS; PROVIDING THAT A PUBLIC HIGH SCHOOL SHALL PROVIDE EQUAL ACCESS TO U.S. ARMED FORCES RECRUITERS VISITING THE CAMPUS AS OTHER RECRUITERS; PROTECTING THE ELECTION LAW RESIDENCY RIGHTS OF A RESERVE MEMBER OF THE U.S. ARMED FORCES ACTIVATED TO FEDERAL MILITARY DUTY; PROHIBITING CERTAIN ADVERSE ACTIONS RELATED TO THE PROFESSIONAL LICENSURE OF A RESERVE MEMBER OF THE U.S. ARMED FORCES WHO IS ACTIVATED TO FEDERAL MILITARY DUTY FOR AN EXTENDED LENGTH OF TIME; AMENDING SECTIONS 13-1-112, 27-12-206, 37-1-105, 37-1-136, 37-3-313, 37-3-346, 37-4-307, 37-4-406, 37-5-307, 37-6-304, 37-7-303, 37-8-431, 37-9-305, 37-10-307, 37-11-201, 37-11-308, 37-12-307, 37-13-306, 37-14-310, 37-15-308, 37-16-407, 37-17-306, 37-17-307, 37-18-307, 37-19-306, 37-20-302, 37-21-302, 37-22-304, 37-23-205, 37-24-308, 37-25-307, 37-26-201, 37-27-105, 37-28-203, 37-29-306, 37-31-322, 37-32-305, 37-34-201, 37-35-203, 37-40-304, 37-42-308, 37-43-307, 37-43-313, 37-47-307, 37-50-317, 37-51-310, 37-53-103, 37-53-203, 37-54-211, 37-54-311, 37-60-312, 37-65-306, 37-66-307, 37-67-315, 37-68-310, 37-69-307, 37-72-306, AND 50-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Access to public high school campuses — definition. (1) The access provided to recruiters for the United States armed forces by a public high school must be equal to the access granted to other recruiting groups and organizations. The access must include any directory information that may be released about students pursuant to the Family Educational Rights and Privacy Act of 1974. Parents or legal guardians have the right to inform the high school that they do not wish to have an armed forces recruiter speak to their children.

(2) For purposes of this section, "armed forces" means the United States army, air force, navy, marines, coast guard, and merchant marine, including the United States military reserves of these services, the Montana national guard, and the service academies and training programs for these services.

Section 2. Protection of professional licenses for activated military reservists — rulemaking authority — definitions. (1) For purposes of this section, the following definitions apply:

(a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.

(b) "License" has the meaning provided in 37-1-302.

(c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board or to the department of labor and industry if the licensing requirements are administered by the department. The report must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

(i) the license must be fully restored;

(ii) conditions must be attached to the reservist's continued retention of the license; or

(iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

Section 3. Section 13-1-112, MCA, is amended to read:

"13-1-112. Rules for determining residence. For registration, voting, or seeking election to the legislature, the residence of an individual must be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any prison; or solely as a result of residing on a military reservation.

(3) (a) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state.

(b) An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(c) *A member of a reserve component of the United States armed forces who is stationed outside of the state but who has no intent of changing residency retains resident status.*

(4) An individual does not lose residence if the individual goes into another state or other district of this state for temporary purposes with the intention of returning, unless the individual exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.

(6) If an individual moves to another state with the intention of making it the individual's residence, the individual loses residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place."

Section 4. Section 27-12-206, MCA, is amended to read:

"27-12-206. Funding. (1) There is a pretrial review fund to be administered by the director for the purposes stated in this chapter. The fund and any income from it must be held in trust, deposited in an account, and invested and reinvested by the director. The fund may not become part of or revert to the

general fund of this state but is subject to auditing by the legislative auditor. Money from the assessments levied under this section must be deposited in the fund.

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year that is not required for the administration of this chapter must be retained by the director and used to finance the administration of this chapter during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of this chapter during that fiscal year.

(3) The annual assessment must be paid on or before the date that the chiropractic physician's annual renewal fee under 37-12-307 is due. An unpaid assessment bears a late charge fee of \$25. The late charge fee is part of the annual assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of labor and industry has under 37-12-307 with regard to a chiropractic physician's annual license fee. *However, nothing in this section may be interpreted to conflict with [section 2].*"

Section 5. Section 37-1-105, MCA, is amended to read:

"37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all licensing boards within the department require all applicants for licensure or renewal to report any legal or disciplinary actions against them ~~which~~ *that* relate to the propriety of the applicants' practice or their fitness to practice the profession or occupation for which they seek licensure. Failure to furnish the required information, *except pursuant to [section 2],* or the filing of false information is grounds for denial or revocation of a license."

Section 6. Section 37-1-136, MCA, is amended to read:

"37-1-136. Disciplinary authority of boards — injunctions. (1) ~~Each~~ *Subject to [section 2], each* licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person

who has been enjoined and who violates the injunction is punishable for contempt of court.”

Section 7. Section 37-3-313, MCA, is amended to read:

“37-3-313. Registration fees — failure to pay — limiting authority to impose registration fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay to the department a registration fee as prescribed by the board.

(2) The payments for registration must be made prior to the expiration date of the registration, as set forth in a department rule, and a receipt acknowledging payment of the registration fee must be issued by the department. The department shall mail registration notices at least 60 days before the registration is due.

(3) ~~It~~ *Except as provided in [section 2],* in case of default in the payment of the registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, the underlying certificate to practice medicine may be revoked by the board on 30 days’ notice given to the delinquent of the time and place of considering the revocation. A ~~registered or~~ certified letter addressed to the last-known address of the person failing to comply with the requirements of registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke the underlying certificate. A certificate may not be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law.

(4) A registration or license fee may not be imposed on a licensee under this chapter by a municipality or any other subdivision of the state.”

Section 8. Section 37-3-346, MCA, is amended to read:

“37-3-346. Certificate renewal — fee. (1) A physician certified to practice telemedicine shall renew the telemedicine certificate every 2 years.

(2) The physician shall complete and return an application for renewal provided by the board by a date established by board rule.

(3) The physician shall pay an application renewal fee in an amount established by board rule.

(4) *This section may not be interpreted to conflict with [section 2].*”

Section 9. Section 37-4-307, MCA, is amended to read:

“37-4-307. Renewal fee — default — local fees prohibited. (1) Each licensed dentist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. Notice of the change in the amount of renewal fees must be given to each dentist registered in this state by the department.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required by the department if the renewal fee is not paid in a timely manner.

(3) (a) ~~It~~ *Except as provided in [section 2],* in case of default in payment of the renewal fee by a licensee, the license must be forfeited by the licensee. The board shall give the licensee 30 days’ notice of its proposed forfeiture action. The notice

must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.

(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for forfeiture, the license may not be forfeited.

(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:

(i) renewal fees are paid for each renewal period that they were unpaid, plus a late penalty fee for each renewal period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(4) Each dentist shall give the board notice of any change in name, address, or status within 30 days of the change.

(5) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dentist licensed under this chapter."

Section 10. Section 37-4-406, MCA, is amended to read:

"37-4-406. Renewal fee — default — forfeiture of license — local fees prohibited. (1) Each licensed dental hygienist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required if the renewal fee is not paid in a timely manner.

(3) ~~In~~ Except as provided in [section 2], in case of default in payment of the renewal fee by any licensee, the licensee shall forfeit the license.

(a) The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice must be sent by certified mail to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.

(b) The payment of the renewal fee on or before the time set for forfeiture, with a reasonable late fee set by the board, excuses the default.

(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:

(i) renewal fees are paid for each period that they were unpaid, plus a late penalty for each period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(4) Each dental hygienist shall give the board notice of any change in name, address, or status within 30 days of the change.

(5) The board may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chapter.

(6) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dental hygienist licensed under this chapter."

Section 11. Section 37-5-307, MCA, is amended to read:

"37-5-307. Renewal fee. (1) A person holding a certificate to practice under this chapter and who is in active practice in this state shall, on or before the date set by department rule, pay a renewal fee prescribed by the board to the department. At least 2 weeks before the renewal date, the department shall send a notice to each person holding a valid certificate to practice under this chapter and from whom a fee is due stating that the fee is due.

(2) ~~The~~ *Subject to subsection (3), the* certificate to practice under this chapter automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of a maximum fee prescribed by the board if the lapsed fees exceed the maximum fee.

(3) *This section may not be interpreted to conflict with [section 2]."*

Section 12. Section 37-6-304, MCA, is amended to read:

"37-6-304. Designations on license — recording — renewal — display. (1) A license issued under this chapter is designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

(2) Licenses must be recorded by the department the same as other medical licenses.

(3) Licenses must be renewed on a date set by department rule.

(4) A license renewal fee set by the board must be paid on a date set by department rule.

(5) The department shall mail renewal notices no later than 60 days prior to the renewal date.

(6) ~~¶~~ *Except as provided in [section 2], if* the renewal fee is not paid on or before the renewal date, the board may revoke the licensee's certificate after giving 30 days' notice to the licensee. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the certificate. A certificate may not be revoked for nonpayment of a renewal fee if the licensee pays the renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) A license revoked for nonpayment of the renewal fee may be reissued only on original application and payment of an additional fee prescribed by the board.

(8) Licenses must be conspicuously displayed by podiatrists at their offices or other places of practice."

Section 13. Section 37-7-303, MCA, is amended to read:

"37-7-303. Renewal fee. (1) A person licensed and registered by the board shall pay to the board on or before the license expiration date set by board rule a renewal of registration fee prescribed by the board. A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the board. It is unlawful for a person who refuses or fails to pay the renewal fee to

practice pharmacy in this state. A certificate and renewal expires at the time prescribed by board rule. A defaulter in person who defaults in the payment of a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with other requirements prescribed by law.

(2) *This section may not be interpreted to conflict with [section 2].*”

Section 14. Section 37-8-431, MCA, is amended to read:

“37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be renewed on the date set by department rule. At least 30 days prior to the renewal date, the department shall mail an application form for renewal of a license to each person to whom a license was issued or renewed. The applicant shall carefully complete and sign the application form and return it to the department with a renewal fee prescribed by the board on or before the renewal date.

(2) The board may increase or decrease the license fee so as to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of Title 37, chapter 1, and this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows the license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew the license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date the license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by the renewal date.

(6) *This section may not be interpreted to conflict with [section 2].*”

Section 15. Section 37-9-305, MCA, is amended to read:

“37-9-305. Renewal of registration and license. Each holder of a nursing home administrator’s registration and license shall renew it by payment of the required fee for the next subsequent period prior to the expiration date of the currently valid registration and license, *except as may be otherwise provided in [section 2]*. Renewals of registrations or licenses must be granted as a matter of course. However, if the board finds, after notice and hearing, that the applicant has acted or failed to act in a manner or under circumstances that would constitute grounds for discipline, it may not issue the renewal.”

Section 16. Section 37-10-307, MCA, is amended to read:

“37-10-307. Renewal — fee. (1) A registered optometrist who desires to continue the practice of optometry in this state shall, before the license expiration date established by rule of the department, pay to the department a renewal fee prescribed by the board in return for which a renewal of registration must be issued. *If Subject to subsection (2), if a person fails or neglects to procure a renewal of registration, the person’s certificate of registration must be revoked*

by the board. However, a certificate of registration may not be revoked without 90 days' notice having been given to the delinquent *person*, who within this period may renew the certificate of registration on the payment of the renewal fee with a penalty prescribed by the board.

(2) *This section may not be interpreted to conflict with the provisions of [section 2].*"

Section 17. Section 37-11-201, MCA, is amended to read:

"37-11-201. General powers — rulemaking power — records. (1) The board may:

- (a) adopt rules to carry this chapter into effect;
- (b) grant, suspend, and revoke licenses;
- (c) issue subpoenas requiring the attendance of witnesses or the production of books and papers;
- (d) take any other disciplinary action necessary to protect the public.

(2) The board shall:

- (a) examine applicants for licenses at reasonable places and times determined by the board;
- (b) review the qualifications of applicants who are approved for examination for licensure;
- (c) conduct written or computerized examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate; and

(d) adopt rules to establish continuing education requirements of at least 20 hours biennially for license renewal for physical therapists and assistants, *subject to the provisions of [section 2].*

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register must show the name of every licensed physical therapist and licensed assistant, the therapist's or assistant's last-known place of business and last-known place of residence, and the date of issue and the number of every license and certificate issued to a licensed physical therapist or licensed assistant.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee."

Section 18. Section 37-11-308, MCA, is amended to read:

"37-11-308. Renewal of license — fee. A licensed physical therapist and a licensed physical therapist assistant shall, on or before the date set by department rule, apply to the department for a license renewal and pay a fee set by board rule. A license that is not renewed before the renewal date automatically lapses, *except as provided in [section 2].* The board may, in its

discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees or a late renewal fee.”

Section 19. Section 37-12-307, MCA, is amended to read:

“37-12-307. Renewal of license — fees. ~~A~~ *Except as provided in [section 2]:*

(1) a license expires on the date set by department rule and must be renewed by the department on payment of a renewal fee, as set by the board, and the presentation of evidence satisfactory to the board that the licensee qualifies for renewal. ~~All~~

(2) *all* applicants for renewal who have not paid the renewal fee on or before the renewal date shall pay an additional late fee prescribed by the board.”

Section 20. Section 37-13-306, MCA, is amended to read:

“37-13-306. Renewal — fee — military exemption. (1) ~~The~~ A license to practice acupuncture must be renewed on a date set by the department, without examination and upon request of the licensee. The request for renewal must be on ~~forms~~ a *form* prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee must be ~~in the hands of~~ *received by* the secretary of the board not later than the expiration date of the license.

(2) Immediately following the renewal date, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be canceled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee prescribed by the board, is ~~in the hands of~~ *received by* the secretary within 30 days of the renewal date.

(3) ~~If~~ *Subject to subsection (5), if* the licensee fails to renew within 30 days following the renewal date, the secretary of the board shall cancel and revoke upon the board’s records all licenses that have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are revoked of the action.

(4) A licensee who allows the license to lapse by failing to renew or reinstate the license as provided in this section may subsequently reinstate the license upon good cause shown to the satisfaction of the board and upon payment of all renewal fees then accrued plus an additional fee prescribed by the board for each renewal period following the cancelling of the license.

(5) A person actively engaged in the military service of the United States and licensed to practice acupuncture as provided in this part is not required to pay the renewal fee or make application for renewal until the renewal date of the calendar period in which the person returns from military service to civilian or inactive status, *except as may be otherwise provided by the board pursuant to [section 2].*”

Section 21. Section 37-14-310, MCA, is amended to read:

“37-14-310. Renewal — fee — reissuance of license. (1) Licenses expire on the date established by rule of the department.

(2) A license must be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing information that the board considers necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee.

(4) *This section may not be interpreted to conflict with [section 2].*”

Section 22. Section 37-15-308, MCA, is amended to read:

“37-15-308. Renewal. (1) Each licensed speech-language pathologist or audiologist shall pay to the board the fee for the renewal of the license according to rules adopted by the department, *subject to the provisions of [section 2].*

(2) The department shall notify each person licensed under this chapter relative to the date of expiration of the license and the amount of the renewal fee. This notice must be mailed to each licensed speech-language pathologist or audiologist at least 1 month before the expiration of the license.

(3) Renewal may be made at any time during the 60 days prior to the expiration date by application ~~therefor~~ *for renewal.*

(4) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive the person of the right to renew the license, but, *unless the person is excepted pursuant to [section 2],* the fee must be increased 10% for each month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(5) Application for renewal following a lapse of 1 year or more is subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) A suspended license is subject to expiration and may be renewed as provided in this section, but the renewal does not entitle the licensee, while the license remains suspended, to engage in the licensed activity or in any other activity or conduct ~~which~~ *that* violates the order or judgment by which the license was suspended.

(7) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If ~~it~~ *the license* is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated plus the delinquency fee, if any, accrued at the time of its revocation.

(8) A person who fails to renew a license within 2 years after its expiration may not renew it, and it may not be restored, reissued, or reinstated, *except as provided in [section 2].* However, the person may reapply for and obtain a new license if the person meets the requirements of this chapter.”

Section 23. Section 37-16-407, MCA, is amended to read:

“37-16-407. Renewal of license — fee — inactive status. (1) A person who practices the fitting of hearing aids and related devices shall pay to the department a fee as set by the board for a renewal of the person’s license. The fee must be fixed by the board to be commensurate with board costs in administering licensure and related board functions. The board shall impose a late fee for renewal applications received after the renewal deadline.

(2) Each applicant for license renewal shall submit evidence showing completion of 10 hours of continuing education completed during the preceding 12 months. The requirements of the continuing education programs are to be determined by the board by rule.

(3) (a) The board may set standards and fees for issuing licenses that designate inactive status.

(b) An inactive licensee may be reinstated to active practice if the inactive licensee:

(i) applies for reinstatement;

(ii) pays a fee set by the board; and

(iii) produces proof satisfactory to the board of completion of the continuing education requirements established by the board.

(4) *This section may not be interpreted to conflict with [section 2].*"

Section 24. Section 37-17-306, MCA, is amended to read:

"37-17-306. Renewal. (1) The license expires on the date set by department rule. The department shall notify each person licensed under this chapter relative to the date of the expiration and the amount of the renewal fee. This notice must be mailed to each licensed psychologist at the licensee's listed address at least 1 month before the expiration of the license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay the renewal fee by the expiration date does not deprive the person of the right to renew. However, a late fee must be assessed in accordance with board rule. Application for renewal following a lapse of 1 year or more will be subject to review by the board, and the applicant may be requested to successfully complete an examination if the board so determines.

(3) *This section may not be interpreted to conflict with [section 2].*"

Section 25. Section 37-17-307, MCA, is amended to read:

"37-17-307. Fees — deposit of fees. (1) The department shall collect the following fees, *except as provided in [section 2]*, none of which is refundable:

(a) application fee;

(b) examination fee, an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board;

(c) certificate fee;

(d) renewal fee.

(2) Fees received by the department must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6)."

Section 26. Section 37-18-307, MCA, is amended to read:

"37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel. (1) A person licensed to practice veterinary medicine in this state shall procure a certificate of registration from the department on or before the date set by department rule. The certificate must be issued by the department on the payment of a fee fixed by the board and on presentation of evidence satisfactory to the board that the licensee qualifies for renewal.

(2) Failure of a person licensed to procure a certificate of registration on or before the date set by department rule constitutes a forfeiture of the license held by the person. A person who has forfeited the license may have it restored by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as the board requires. The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of the license during the period of active duty with the armed services. However, within 1 year after release or discharge from duty in the armed services the person shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before the date set by department rule, and the same forfeiture and restoration requirements apply. *This section may not be interpreted to conflict with [section 2].*

(4) A person licensed must at all times have the person's residence and office address on file with the department."

Section 27. Section 37-19-306, MCA, is amended to read:

"37-19-306. Renewal of mortician's license — fee — suspension for nonrenewal. (1) The license fee for a mortician's license must be postmarked on or before the date set by department rule. The amount of the renewal fee must be set by the board.

(2) ~~Failure~~ *Subject to subsection (3), failure to pay the renewal fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty prescribed by the board.*

(3) *This section may not be interpreted to conflict with [section 2].*"

Section 28. Section 37-20-302, MCA, is amended to read:

"37-20-302. Utilization plan approval fee — renewal of license — renewal fee. (1) A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A license issued under this part must be renewed for a period and on a date set by the department.

(4) A license renewal fee set by the board must be paid at the time the license is renewed.

(5) The department shall mail a renewal notice no later than 60 days prior to the renewal date. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the license.

(6) ~~¶~~ *Except as provided in [section 2], if the license renewal fee is not paid on or before the renewal date, the board may revoke the license after giving 30 days' notice to the licensee. A license may not be revoked for nonpayment of a renewal*

fee if the licensee pays the renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) Fees received by the department must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."

Section 29. Section 37-21-302, MCA, is amended to read:

"37-21-302. Registered dietitian — qualifications. ~~No~~ A person may *not* use, in connection with ~~his~~ *the person's* name or place of business, the term "registered dietitian" or represent in any way that ~~he~~ *the person* is a registered dietitian unless ~~he~~ *the person*:

(1) has been granted, prior to October 1, 1983, the right to use the term "registered dietitian" by an authorized agency; or

(2) (a) has fulfilled all the requirements set forth in 37-21-301(2);

(b) has satisfactorily completed an examination for registered dietitians administered by an authorized agency; and

(c) *except as provided in [section 2],* has satisfactorily completed, ~~from time to time, such~~ *the* continuing education requirements as may be established by an authorized agency."

Section 30. Section 37-22-304, MCA, is amended to read:

"37-22-304. Renewal of license. (1) An application for renewal of an existing license must be made on or before the date set by department rule.

(2) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of qualification for renewal.

(3) ~~The~~ *Subject to subsection (5),* the renewal fee is increased by 10% for each month or part of a month that the renewal is delayed. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(4) ~~A~~ *Subject to subsection (5),* a license not renewed within 1 year following its expiration date terminates automatically.

(5) *This section may not be interpreted to conflict with [section 2]."*

Section 31. Section 37-23-205, MCA, is amended to read:

"37-23-205. Renewal of license. (1) The department may adopt rules to provide for the renewal of an existing license.

(2) An application for renewal of an existing license must be made on or before the expiration date set by department rule.

(3) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of qualification for renewal.

(4) ~~The~~ *Subject to subsection (6),* the renewal fee is increased by 10% for each month or part of a month that the renewal is delayed. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(5) ~~A~~ *Subject to subsection (6),* a license not renewed within 1 year following its expiration date terminates automatically.

(6) *This section may not be interpreted to conflict with [section 2]."*

Section 32. Section 37-24-308, MCA, is amended to read:

“37-24-308. Renewal of license. (1) Each license issued under this chapter is subject to annual renewal on the date set by department rule upon the payment of a renewal fee and expires unless renewed in the manner prescribed by the rules of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but a late renewal of a license may not be granted more than 5 years after its expiration.

(2) *This section may not be interpreted to conflict with [section 2].”*

Section 33. Section 37-25-307, MCA, is amended to read:

“37-25-307. Renewal of license. (1) An application for renewal of license must be made for a period and on a date set by the department.

(2) A renewal license must be issued when the applicant submits proof that requirements for continued licensure have been met and pays a renewal fee set by the board commensurate with costs.

(3) An additional fee may be imposed on applications for renewal received by the board more than 30 days after the license renewal date.

(4) *This section may not be interpreted to conflict with [section 2].”*

Section 34. Section 37-26-201, MCA, is amended to read:

“37-26-201. Powers and duties of board. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules prescribing the time, place, content, and passing requirements of the licensure examination, which may be composed of part or all of the national naturopathic physicians licensing examination;

(4) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(5) adopt rules that set nonrefundable fees, commensurate with costs, for application, examination, licensure, and other administrative services;

(6) approve naturopathic medical colleges as defined in 37-26-103;

(7) issue certificates of specialty practice;

(8) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301; ~~and~~

(9) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301; ~~and~~

(10) *adopt rules to implement the provisions in [section 2].”*

Section 35. Section 37-27-105, MCA, is amended to read:

“37-27-105. General powers and duties of board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board ~~shall have~~ *has* the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of a license application and examination, criteria for and grading of examinations, and establishment of examination and license fees commensurate with actual costs;

(b) the issuance of a provisional license to midwives who filed the affidavit required by section 2, Chapter 493, Laws of 1989;

(c) the establishment of criteria for minimum educational, apprenticeship, and clinical requirements that, at a minimum, meet the standards established in 37-27-201;

(d) the development of eligibility criteria for client screening by direct-entry midwives in order to achieve the goal of providing midwifery services to women during low-risk pregnancies;

(e) the development of procedures for the issuance, renewal, suspension, and revocation of licenses *consistent with the provisions in [section 2]*;

(f) the adoption of disciplinary standards for licensees;

(g) the development of standardized informed consent and reporting forms;

(h) the adoption of ethical standards for licensed direct-entry midwives;

(i) the adoption of supporting documentation requirements for primary birth attendants; and

(j) the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards established in 37-27-201."

Section 36. Section 37-28-203, MCA, is amended to read:

"37-28-203. Renewal of license — application and fee. (1) ~~Except as provided in [section 2],~~ a respiratory care practitioner's license expires on the date set by department rule.

(2) A licensee may renew a license by:

(a) filing an application with the board on a form approved by the board; and

(b) paying a renewal fee in an amount established by the board."

Section 37. Section 37-29-306, MCA, is amended to read:

"37-29-306. Licensing. (1) A denturist license is valid for a period established by department rule and expires on the date set by department rule. A renewal license must be issued upon timely payment of the renewal fee and the submission of proof of continued qualification for licensure. In addition, the denturist shall submit proof that the denturist holds a current cardiopulmonary resuscitation card. The license must bear on its face the address where the licensee's denturist services will be performed.

(2) Applications must be submitted on forms approved by the board and furnished by the department. Each application must include all other documentation necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. Applications must be accompanied by the appropriate fees.

(3) *This section may not be interpreted to conflict with [section 2].*"

Section 38. Section 37-31-322, MCA, is amended to read:

"37-31-322. Renewal — delinquency fee. (1) Licenses and certificates may not be issued for longer than 1 year unless otherwise provided by department rule. Licenses and certificates expire on the date set by department rule and may be renewed. Licenses and certificates may be renewed by application made on or before the renewal date and by the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and must be as set by the board.

(2) A fee prescribed by the board must be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline.

(3) *This section may not be interpreted to conflict with [section 2].*"

Section 39. Section 37-32-305, MCA, is amended to read:

"37-32-305. Fees — renewal — deposit of money collected. (1) The fee for an original electrologist license must be set by the board. The renewal is automatic, unless revoked or suspended for cause, and the renewal fee must be set by the board.

(2) The fee for an original electrologist salon license fee must be the same as that for cosmetology salons. The renewal fee must be the same as that for cosmetology salons.

(3) A license issued under this chapter expires on the date set by department rule and may be renewed at periodic intervals as determined by department rule. Failure to renew subjects the licensee to a late renewal fee prescribed by the board to be added to the regular renewal fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.

(4) All fees or money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board in administration of the chapter.

(5) *This section may not be interpreted to conflict with [section 2].*"

Section 40. Section 37-34-201, MCA, is amended to read:

"37-34-201. Powers and duties of the board — rulemaking authority.

(1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board has the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of a license application procedure and acceptable certifications for each category of license;

(b) the establishment of license fees commensurate with actual costs;

(c) the establishment of criteria for educational requirements that, at a minimum, meet the standards set forth in 37-34-303;

(d) the development of procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses *consistent with the provisions in [section 2]*;

(e) the adoption of disciplinary standards for licensees;

(f) the establishment of hearing procedures; and

(g) a requirement that the supervisor of a clinical laboratory technician be accessible at all times that testing is being performed by the technician in order to provide onsite, telephonic, or electronic consultation."

Section 41. Section 37-35-203, MCA, is amended to read:

"37-35-203. Renewal of license — application and fee. (1) A license expires biennially on the date set by department rule.

(2) A license holder may renew a license by:

(a) filing an application on a form prescribed by the department; and

(b) paying a renewal fee in an amount established by the department.

(3) A default in the payment of a renewal fee after the date it is due may increase the fee, as prescribed by the department by rule.

(4) It is unlawful for a person who refuses or fails to pay the renewal fee to practice as a licensed addiction counselor in this state.

(5) ~~A~~ *Subject to subsection (6)*, a license not renewed within 1 year following its expiration date terminates automatically.

(6) *This section may not be interpreted to conflict with [section 2].*"

Section 42. Section 37-40-304, MCA, is amended to read:

"37-40-304. Fees — renewal. (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew the license by paying a renewal fee and meeting qualifications set by the board.

(3) Renewal fees are due on or before the renewal date set by department rule. ~~If~~ *Subject to subsection (4)*, if the renewal fee is not paid, the license expires. Licenses ~~which~~ *that* have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board.

(4) *This section may not be interpreted to conflict with [section 2].*"

Section 43. Section 37-42-308, MCA, is amended to read:

"37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension. (1) Certificates issued under this chapter must be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule adopted by the department pursuant to 37-1-134, except that the department shall reduce the fee by the amount that the cost of administering the certificate is offset by federal funds received to fund the administration of the program.

(2) ~~If~~ *Subject to subsection (6)*, if a certificate holder does not apply for a renewal of the certificate before July 1 and remit to the department the

necessary renewal fee, the department shall suspend the certificate. ~~The~~ *Subject to subsection (6), the* department shall revoke any certificate that remains suspended for a period of more than 30 days. However, the department, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10 days before the time set for action to be taken by the department on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the department that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension must be given to the certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through the person's own fault desires to continue as a water or wastewater plant operator, the person shall make application to the department under 37-42-304. Successful completion of an examination may be required at the discretion of the department.

(6) *This section may not be interpreted to conflict with the provisions of [section 2].*"

Section 44. Section 37-43-307, MCA, is amended to read:

"37-43-307. Annual renewal — fee — revocation for nonrenewal. (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee as prescribed by the board.

(2) ~~If Subject to subsection (3), if~~ a licensee does not apply for renewal of ~~his~~ *the* license before the first day of a license year and remit to the department the renewal fee, ~~he shall have his~~ *the* license *must be* suspended by the board. ~~If Subject to subsection (3), if~~ the license remains suspended for a period of more than 30 days after the first day of a license year, it ~~shall~~ *must* be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least 10 days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through ~~his~~ *the* person's own fault desires to engage in the business of water well drilling or monitoring well construction in this state or contracting ~~therefor~~ *for those services, he the person must* shall apply under 37-43-303. Notice of suspension ~~shall~~ *must* be given to a licensee when the suspension occurs.

(3) *This section may not be interpreted to conflict with the provisions of [section 2].*"

Section 45. Section 37-43-313, MCA, is amended to read:

"37-43-313. Disciplinary authority. (1) If the board finds grounds for disciplinary action, as provided in subsection (2), the board may by order:

(a) require a licensee to repair or reconstruct substandard wells at the licensee's expense to meet board standards;

- (b) require a licensee to take further training or education;
 - (c) place probationary terms and conditions on a license;
 - (d) suspend a license for a period not to exceed 1 year; or
 - (e) revoke a license, specifying that the licensee may not reapply for licensure for a period of 3 years from the date of revocation.
- (2) Grounds for disciplinary action include:
- (a) violating the rules, construction standards, or laws established by the board and this chapter;
 - (b) disobeying an order from the board to repair or reconstruct a substandard well;
 - (c) violating probationary terms of or conditions on a license;
 - (d) misrepresenting facts on well log reports, license or renewal applications, or apprenticeship records or in response to board inquiries; or
 - (e) failing to maintain qualifications for licensure as specified in 37-43-305.
- (3) *This section may not be interpreted to conflict with the provisions of [section 2].*

Section 46. Section 37-47-307, MCA, is amended to read:

“37-47-307. Investigation of applicant — issuance or denial of license. (1) The department shall investigate each applicant for an outfitter’s, guide’s, or professional guide’s license. The board shall determine the applicant’s qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications stated in this chapter or rules adopted pursuant to this chapter. In the event that any application for a license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form provided by the board.

(4) *This section may not be interpreted to conflict with [section 2].*

Section 47. Section 37-50-317, MCA, is amended to read:

“37-50-317. Certificate, license, and permit expiration — renewal fees. (1) Certificates, licenses, and permits issued by the board expire on the date set by department rule.

(2) Certificates and licenses must be renewed by the department upon payment of the periodic renewal fee set by the board and upon compliance with requirements prescribed by the board.

(3) Permits must be renewed by the department upon payment of the periodic renewal fee and upon compliance with the requirements prescribed by the board.

(4) *This section may not be interpreted to conflict with [section 2].*

Section 48. Section 37-51-310, MCA, is amended to read:

“37-51-310. Renewal. (1) License fees are due and payable for the ensuing licensure period at a time prescribed by department rule. Failure to remit renewal fees before the expiration date of the licensure period, *except as provided in [section 2]*, automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the board for just cause.

(2) A licensee who allows the license to lapse by failing to remit the fees before the expiration date may have the license reinstated by the board by:

(a) within 45 days after the expiration date, providing a satisfactory explanation to the board for the licensee’s failure to renew the license; and

(b) paying the current renewal fee prescribed by the board.

(3) The board may also charge a late fee equal to twice the current renewal fee, but not less than \$100, to a licensee who does not renew the license as required by subsection (1).

(4) A licensee shall submit proof of completion of continuing education within the time and in the manner required by the board. ~~¶ Except as provided in [section 2], if~~ a licensee fails to submit the proof, the board shall notify the licensee of the failure and provide the licensee the opportunity to present to the board the reasons for the failure. ~~Upon~~ *Subject to [section 2], upon* failure of the licensee to show good cause for failing to submit timely proof of completion of continuing education, the board may suspend the individual’s license. After suspension, the licensee is entitled to a hearing on the suspension in accordance with the provisions of chapter 1, part 3, of this title and the contested case provisions of the Montana Administrative Procedure Act.”

Section 49. Section 37-53-103, MCA, is amended to read:

“37-53-103. Fees. (1) The board shall charge and collect fees fixed by this section. All fees collected under this chapter must be deposited into the state special revenue fund for the use of the board and are not refundable except as provided in this chapter.

(2) The initial fee for filing an application for registration for sale of a timeshare is \$500. Any filing containing over 400 intervals must be accompanied by a fee of \$5 for each additional interval.

(3) A fee for amendment of registration for the purpose of adding additional intervals during a registration period is \$200 plus \$5 for each interval in excess of 50 added by such amendment.

(4) The fee for an application for renewal of registration is \$200.

(5) The fee for an initial application for or renewal of a license as a timeshare salesperson is \$15.

(6) The fee for an initial application for or renewal of a license as a timeshare broker is \$35.

(7) The fee for an amendment of registration, other than the addition of units, as required in 37-53-203(3), is \$200.

(8) *This section may not be interpreted to conflict with [section 2].”*

Section 50. Section 37-53-203, MCA, is amended to read:

“37-53-203. Registration period — renewal. (1) A timeshare offering registration is effective for 1 year from the date of approval of the registration application.

(2) Registration of a timeshare offering may be renewed for an additional 1-year period by filing a renewal application with the board no later than 30 days before the expiration of the registration period and paying the prescribed fee. A renewal application must contain any information the board requires to indicate any substantial changes in the information contained in the original application.

(3) If a materially adverse change in the condition of the developer or an affiliate occurs during any year, an amendment to the documents filed under 37-53-202 must be filed, along with the prescribed fee.

(4) *This section may not be interpreted to conflict with [section 2].*"

Section 51. Section 37-54-211, MCA, is amended to read:

"37-54-211. Late renewal of license. (1) ~~A~~ *Subject to subsection (3), a license that is not renewed within 1 year of the most recent renewal date automatically terminates. A licensee may renew the license within the 1-year period from the date of most recent renewal by:*

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the requirements for continued licensure; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a license if the licensee has continued to perform appraisal services as a licensed real estate appraiser following expiration of the license.

(3) *This section may not be interpreted to conflict with [section 2].*"

Section 52. Section 37-54-311, MCA, is amended to read:

"37-54-311. Late renewal of certificate. (1) ~~A~~ *Subject to subsection (3), a certificate that is not renewed within 1 year of the most recent renewal date automatically terminates. A certificate holder may renew the certificate within the 1-year period from the date of most recent renewal by:*

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the requirements set by law; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a certificate if the certificate holder has continued to perform appraisal services in this state following expiration of the certificate.

(3) *This section may not be interpreted to conflict with [section 2].*"

Section 53. Section 37-60-312, MCA, is amended to read:

"37-60-312. Renewal. (1) Licenses and identification cards issued under this chapter expire at midnight on the dates prescribed by department rule if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

(2) The board may refuse to renew a license or identification card for any reason for which it could refuse to grant an original application or suspend or revoke any license or identification card.

(3) *This section may not be interpreted to conflict with the provisions of [section 2].*”

Section 54. Section 37-65-306, MCA, is amended to read:

“37-65-306. Renewal — fee. (1) A licensed architect in this state who desires to continue the practice of the profession shall, on or before the renewal date set by department rule:

(1)(a) pay to the department a reasonable fee as prescribed by the board; and

(1)(b) present evidence to the board of continued qualification for licensure.

(2) *This section may not be interpreted to conflict with [section 2].*”

Section 55. Section 37-66-307, MCA, is amended to read:

“37-66-307. Renewal — withdrawal — deposit of fees. (1) Certification of licensure or renewal of registration expires on the date set by department rule. Renewal may be effected on or before the renewal date by payment to the department of the required fee. The board shall issue current renewal registration to each landscape architect promptly upon payment of the renewal registration fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, shall give written notice to the board, and the board shall suspend the license. The person may resume practice upon payment of the then-current fee and upon approval by the board.

(3) All fees received under the provisions of this chapter must be deposited in the state special revenue fund by the department. The money collected must be used by the department to carry out the purpose, duties, and responsibilities set forth in this chapter, subject to 37-1-101(6).

(4) *This section may not be interpreted to conflict with [section 2].*”

Section 56. Section 37-67-315, MCA, is amended to read:

“37-67-315. Biennial renewal — fee — statement of competency. (1) Licenses expire every second year on the date established by rule of the department and become invalid on that date unless renewed. The department shall notify each person licensed under this chapter of the date of the expiration of the person’s license and the amount of the fee required for its renewal for 2 years. This notice must be mailed at least 1 month in advance of the date of the expiration of the license. Renewal may be made prior to the expiration date by the payment of a fee as set by the board for either a professional engineer or a professional land surveyor. For renewal of a dual license as both a professional engineer and a professional land surveyor, the fee must be set by the board.

(2) *Subject to subsection (5),* a license may not be renewed unless the registrant submits a statement to the effect and the board is satisfied that the licensee has maintained competency by:

(a) the continued practice of engineering or land surveying; and

(b) engaging in other activities that provide for the maintenance of competency if prescribed by board rule, such as continuing education, which may require up to 15 professional development hours as prescribed by board rule and is generally patterned after the model rules of the national council of examiners for engineering and surveying.

(3) Failure on the part of a licensee to renew the license biennially prior to the expiration date does not deprive the licensee of the right of renewal;

however, a licensee who fails to pay the renewal fee for an additional year of the biennium is considered a new applicant and is required to submit a new application.

(4) The fee for any licensee who fails to renew the license prior to the expiration date must be increased by an amount not to exceed 50% of the renewal fee. Renewal may not be completed until all fees are paid.

(5) *This section may not be interpreted to conflict with [section 2].*"

Section 57. Section 37-68-310, MCA, is amended to read:

"37-68-310. License renewal period — renewal of lapsed licenses. (1) Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board or unless the department changes the duration of the renewal period, must be renewed for a period of 3 years by the department on application for renewal made to the department on or before the renewal date set by department rule and on the payment of a renewal fee. If application for renewal is not made on or before the renewal date, an additional fee prescribed by board rule must be paid. It is unlawful for a person who refuses or fails to pay the renewal fee to practice electrical work in this state. A person with a lapsed license may be issued a renewal license without examination if the applicant pays the original renewal fee and any delinquency fee within 1 year of the license expiration date. ~~A~~ *Subject to subsection (2),* a lapsed license that is not renewed within 1 year following its expiration date may not be renewed unless the applicant passes the examination and pays the fee required for an original license.

(2) *This section may not be interpreted to conflict with [section 2].*"

Section 58. Section 37-69-307, MCA, is amended to read:

"37-69-307. Examination fee and renewal fee. (1) An applicant for a master plumber's license may not submit to the examinations prescribed by the board until the applicant has deposited with the department an examination fee prescribed by the board, and an applicant for a journeyman plumber's license may not submit to the examination prescribed by the board until the applicant has deposited with the department an examination fee as prescribed by the board.

(2) ~~A~~ *Subject to subsection (4),* a license when issued expires on the date established by rule of the department. A license issued to a master plumber or a journeyman plumber may be renewed without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of a fee as set by the board for renewal of a master plumber's license or a fee as set by the board for renewal of a journeyman plumber's license. Renewal is for the period established by the department by rule.

(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions.

(4) *This section may not be interpreted to conflict with [section 2].*"

Section 59. Section 37-72-306, MCA, is amended to read:

"37-72-306. Renewal. (1) ~~A~~ *Subject to subsection (3),* a license issued under this chapter expires and is invalid after the renewal date established by the department by rule. The department shall notify each person licensed under this chapter of the date of the expiration of the person's license and the amount of the license renewal fee. The notice must be mailed to each licensed

construction blaster at the blaster's listed address at least 1 month before the expiration of the blaster's license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a licensee to pay the renewal fee by the expiration date does not deprive the licensee of the right to renew the licensee's license, but *subject to subsection (3)*, the fee must be increased 10% for each month or major portion of a month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more is subject to review by the department, and the applicant may be required to successfully complete an examination.

(3) *This section may not be interpreted to conflict with [section 2].*"

Section 60. Section 50-6-203, MCA, is amended to read:

"50-6-203. Rules. (1) The board, after consultation with the department of public health and human services, the department of justice, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to training and certification of emergency medical technicians and administration of drugs.

(2) The board may, by rule, establish various levels of emergency medical technician certification and shall specify for each level the training requirements, acts allowed, recertification requirements, and any other requirements regarding the training, performance, or certification of that level of emergency medical technician that it considers necessary, *subject to the provisions of [section 2].*"

Section 61. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 1, and the provisions of Title 20, chapter 7, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 2].

Section 62. Effective date. [This act] is effective on passage and approval.

Section 63. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002.

Approved April 9, 2003

CHAPTER NO. 272

[HB 220]

AN ACT REVISING AND CLARIFYING THE LAWS PROVIDING FOR RESTITUTION BY CRIMINALS TO ADDRESS COURT OPINIONS; ENSURING THAT THE DUTY TO PAY CONTINUES TO EXIST UNTIL RESTITUTION IS FULLY PAID; ALLOWING THE STATE TO CONTRACT WITH A PRIVATE ENTITY OR GOVERNMENTAL AGENCY FOR THE COLLECTION OF RESTITUTION PAYMENTS; PROVIDING FOR FULL REPLACEMENT VALUE RESTITUTION; ADDING METHODS TO ENSURE PAYMENT OF RESTITUTION; CHANGING PROCEDURES FOR SUPERVISION OF THE PAYMENT OF RESTITUTION; AMENDING SECTIONS 46-18-201, 46-18-237, 46-18-241, 46-18-242, 46-18-243, 46-18-244,

46-18-245, AND 53-30-132, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

“46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(c) a term of incarceration at a county detention center or state prison, as provided in Title 45, for the offense;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of court-appointed counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any *other* penalties imposed pursuant to subsection (1), if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or *nolo contendere* and the sentencing judge finds that the person is a victim of the offense, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(7) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.”

Section 2. Section 46-18-237, MCA, is amended to read:

“46-18-237. Garnishment — report by supervising authority. (1) If the department of corrections becomes aware that a ~~prisoner~~ *person* while incarcerated under the legal custody of the department of corrections *or a person supervised by the department* is entitled to receive money from any source, the ~~prisoner's~~ *person's* supervising authority may prepare a report identifying:

- (a) the total costs incurred by the state or county during the ~~prisoner's~~ *person's* incarceration;
- (b) the criminal sentences imposed upon the ~~prisoner~~ *person*, including:
 - (i) the amount of restitution, if any, ordered in each sentence;
 - (ii) the name and current address of each victim or other person to whom restitution is owed;
 - (iii) the amount of restitution paid by the ~~prisoner~~ *person*; and
 - (iv) the amount of restitution currently owed by the ~~prisoner~~ *person* for each sentence;
- (c) the amount of any child support owed by the ~~prisoner~~ *person*.

(2) The supervising authority shall provide notice and a copy of the report to the ~~board of crime control~~ *office of victims services in the department of justice* and the county attorney for the county in which the ~~prisoner~~ *person* was sentenced, either of whom may submit the report along with a petition for garnishment to the court that sentenced the ~~prisoner~~ *person*. The court may order garnishment of the ~~prisoner's~~ *person's* money for the payment of restitution, child support, and per diem costs of incarceration owed by the ~~prisoner~~ *person*. Upon receipt of the petition, the court shall provide a copy of the report to the ~~prisoner~~ *person*, who has 15 days following receipt to file an objection. The court may hold a hearing to consider objections raised by the ~~prisoner~~ *person*.

(3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the amount of restitution, child support, and repayment for per diem costs owed by the ~~prisoner~~ *person*. The court shall order, up to the amount of money available, payment of an amount equal to the restitution owed by the ~~prisoner~~ *person* to the person designated under 46-18-245 to supervise the making of restitution payments, any outstanding child support payments to the department of public health and human services for disbursement to the obligee, and per diem costs owed by the ~~prisoner~~ *person*. All restitution owed by the ~~prisoner~~ *person* must be paid prior to payment of any child support payments. All child support owed by the ~~prisoner~~ *person* must be paid prior to the payment of any per diem costs.”

Section 3. Section 46-18-241, MCA, is amended to read:

“46-18-241. Condition of restitution. (1) As provided in 46-18-201, a sentencing court shall, *as part of the sentence*, require an offender to make full restitution to any victim ~~of the offense~~ who has sustained pecuniary loss ~~as a result of the offense~~, including a person suffering an economic loss ~~as a result of the crime~~. The duty to pay full restitution under the sentence remains with the offender *or the offender's estate* until full restitution is paid *and is a condition of any probation or parole*.

(2) (a) The court shall require the offender to pay the cost of supervising the payment of restitution, as provided in 46-18-245, if the offender is able to pay, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5.

(b) *A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid. The department may contract with a government agency or private entity for the collection of the payments for restitution and the cost of collecting the payments for restitution during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection (2)(b).*

(c) ~~Payment~~ *In a misdemeanor case, payment of restitution and of the cost of supervising the payment of restitution must be made to the court, which until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The court shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the court ordered restitution to be paid.*

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

Section 4. Section 46-18-242, MCA, is amended to read:

"46-18-242. Investigation and report of victim's loss. (1) Whenever the court believes that a victim of the offense may have sustained a pecuniary loss ~~as a result of the offense~~ or whenever the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) ~~documentation~~ *a list of the offender's financial resources and future ability to pay restitution assets; and*

(b) ~~documentation of an affidavit that specifically describes~~ *the victim's pecuniary loss and the replacement value in dollars of the loss, submitted by the victim or by the board of crime control if compensation for the victim's loss has been reimbursed by the state.*

(2) When a presentence report is not authorized or requested, the court ~~may receive~~ *shall accept* evidence of the offender's ability to pay and the victim's loss at the time of sentencing."

Section 5. Section 46-18-243, MCA, is amended to read:

"46-18-243. Definitions. For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation ~~the money equivalent of loss resulting from~~

~~property taken, destroyed, broken, or otherwise harmed and~~ out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or crematory services; ~~and~~

(b) *the full replacement cost of property taken, destroyed, harmed, or otherwise devalued as a result of the offender's criminal conduct;*

(c) *future medical expenses that the victim can reasonably be expected to incur as a result of the offender's criminal conduct, including the cost of psychological counseling, therapy, and treatment; and*

~~(b)~~(d) *reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.*

(2) (a) "Victim" means:

(i) a person who suffers loss of property, bodily injury, or death as a result of:

(A) the commission of an offense;

(B) the good faith effort to prevent the commission of an offense; or

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;

(iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this state or that incurs costs or losses during the commission or investigation of an escape, as defined in 45-7-306, or during the apprehension or attempted apprehension of the escapee; ~~or~~

(iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss;

(v) *the crime victims compensation and assistance program established under Title 53, chapter 9, part 1, to the extent that it has reimbursed a victim for pecuniary loss; and*

(vi) *any person or entity whom the offender has voluntarily agreed to reimburse as part of a voluntary plea bargain.*

(b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

Section 6. Section 46-18-244, MCA, is amended to read:

"46-18-244. Type and time of payment — defenses — ensuring payment. (1) The court shall specify the total amount ~~to be paid and the method and time of payment and may permit payment in installments of restitution that the offender shall pay.~~

(2) ~~In determining the amount, method, and time of each installment payment, the court shall consider the financial resources and future ability of the offender to pay. The court shall provide for payment to a victim of the full amount of the pecuniary loss caused by the offense. The In the proceeding for the determination of the amount of restitution, the offender may assert any defense that the offender could raise in a civil action for the loss sought to be compensated by the restitution order for which the victim seeks compensation.~~

(3) In addition to other methods of payment, the court may order one or more of the following in order to satisfy the offender's restitution obligation:

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

(b) return of any property to the victim;

~~(c) payment of up to one-third of the offender's prison earnings.~~

(4) With the consent of the victim and in the discretion of the court, an offender may be ordered to make restitution in services to the victim in lieu of money or to make restitution to a person designated by the victim, if that person provided services to the victim as a result of the offense.

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

(6) *For a felony offense:*

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

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

(c) *during any period that the defendant is on probation or parole, the probation and parole officer shall set a monthly restitution payment amount by dividing the total amount of unpaid restitution by the number of remaining months of probation or parole. The probation and parole officer may adjust the monthly payment up or down by a maximum of 10%, depending on the offender's circumstances.*

(7) *The department of corrections shall give the department of revenue a copy of the order to pay restitution. If full restitution has not been paid, the department of revenue shall, pursuant to an agreement made under 46-18-241, intercept any state tax refunds and any federal tax refunds, as provided by law, due the offender and transfer the money to the department of corrections for a felony offense and to the sentencing court for a misdemeanor offense for disbursement to the victim. The department of revenue may charge the department of corrections a fee to recover its costs of intercepting a tax refund. The fee may not exceed the amount charged a state agency for debt collection services under Title 17, chapter 4."*

Section 7. Section 46-18-245, MCA, is amended to read:

“46-18-245. Supervision of payment. ~~The~~ *For a felony offense, the court shall order the department of corrections to supervise the payment of restitution. For a misdemeanor offense, the court may order a probation officer, restitution officer, or other designated person to supervise the making of restitution and to report to the court any default in payment. If the victim of a misdemeanor has received compensation under Title 53, chapter 9, the court may also order an employee of the board of crime control office of victims services, as defined in 53-9-103, to supervise the making of restitution and to report to the court any default in payment.*”

Section 8. Section 53-30-132, MCA, is amended to read:

“53-30-132. Inmate participation and status in prison work programs — prison industries and vocational training program — wages and benefits. (1) The department of corrections may:

(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require a correctional facility to purchase needed goods from other correctional facilities;

(g) provide for the repair and maintenance of property and equipment of institutions by inmates;

(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;

(i) provide for construction projects, up to the aggregate sum of \$200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).

(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;

(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;

(l) sell manufactured or agricultural products and livestock on the open market;

(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(n) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;

(o) collect 15% of the ~~net~~ gross wages paid to an inmate employed in a federally certified prison industries program, *to be deposited in a department restitution fund and used to satisfy any unpaid restitution obligation of the inmate or, if the obligation has been fully paid or no restitution was ordered, for transfer quarterly* to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund as provided in Title 53, chapter 9, part 1; and

(p) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(4) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5).

(5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be based on the following criteria:

- (i) knowledge and skill;
- (ii) attitude toward authority;
- (iii) physical effort;
- (iv) responsibility for equipment and materials; and
- (v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the prison industries program or by the department of corrections. If the department of

corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

(8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."

Section 9. Coordination instruction. If Senate Bill No. 10 and [this act] are both passed and approved, then [section 92] of Senate Bill No. 10, amending 46-18-242, is void.

Section 10. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to offenders who have an unpaid restitution obligation on [the effective date of this act].

Approved April 10, 2003

CHAPTER NO. 273

[HB 287]

AN ACT REQUIRING A PERSON WHO PURPOSELY IGNITES A FIRE WITHOUT A PERMIT TO REIMBURSE THE ENTITY RESPONSIBLE FOR ANY FIRE SUPPRESSION ACTIVITIES RESULTING FROM THE ILLEGAL FIRE; AND AMENDING SECTION 7-33-2205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2205, MCA, is amended to read:

"7-33-2205. Establishment of fire season — permit requirements — reimbursement of costs. (1) The county governing body may in its discretion establish fire seasons annually, during which ~~no~~ a person may *not* ignite or set any forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the county protection area on any forest, range, or croplands subject to the provisions of this part without having obtained an official written permit to ignite or set ~~such~~ a fire from the recognized protection agency for that protection area.

(2) *A person who purposely ignites a fire in violation of this section shall reimburse the county governing body or recognized protection agency for costs incurred for any fire suppression activities resulting from the illegal fire.*"

Approved April 9, 2003

CHAPTER NO. 274

[HB 438]

AN ACT REVISING THE REQUIREMENTS FOR PAYMENTS TO CONTRACTORS AND SUBCONTRACTORS WITH RESPECT TO CONSTRUCTION CONTRACTS; REVISING DEFINITIONS; PROVIDING THAT A CONSTRUCTION CONTRACT MAY PROVIDE FOR A BILLING CYCLE THAT IS OTHER THAN A MONTHLY BILLING CYCLE; PROVIDING THAT CERTAIN CONSTRUCTION CONTRACT PROVISIONS ARE AGAINST STATE POLICY AND ARE VOID AND UNENFORCEABLE; ESTABLISHING CONDITIONS UNDER WHICH A CONTRACTOR OR SUBCONTRACTOR MAY SUSPEND PERFORMANCE OR TERMINATE A CONSTRUCTION CONTRACT; AMENDING SECTIONS 28-2-2101 AND 28-2-2103, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-2-2101, MCA, is amended to read:

“28-2-2101. Definitions. As used in this part, unless the context requires otherwise, the following terms apply:

(1) “Construction contract” means a written agreement between an owner and a contractor for the contractor to construct or improve or to provide construction management for the construction or improvement of an improvement to real property.

(2) “Contractor” means a person who has signed a construction contract with an owner.

(3) “Government entity” means a city, town, county, consolidated municipal-county government, school district, or other special district.

(4) “Improve” means to build, alter, demolish, repair, construct, expand, cover, excavate, grade, fill, clear, plant, landscape, or furnish material or labor, or both for an improvement.

(5) “Improvement” means all or a part of a residential or commercial building, structure, area of real property, quantity of earth or fill material, tree or shrubbery, driveway, roadway, or parking area.

(6) “Owner” means a governmental entity or private entity that has a legal interest in the real property improved or to be improved by the performance of the construction contract. *An owner may, in the contract, designate another person to represent the owner for the purpose of overseeing the performance of the construction contract and in handling administrative tasks respecting the construction contract.*

~~(7) “Owner’s representative” means an architect, engineer, or other person who represents the owner and is designated in the contract as the person representing the owner for the purposes of the administration or oversight of the performance of the construction contract.~~

~~(8)(7)~~ “Receipt” or “receive” means actual receipt.

~~(9)(8)~~ “Subcontract” means a contract between a contractor and a subcontractor or between a subcontractor and another subcontractor, the purpose of which is the performance of all or a part of the construction contract.

(10)(9) "Subcontractor" means a person who has contracted with a contractor or another subcontractor for the purposes of performance of all or a part of a subcontract."

Section 2. Section 28-2-2103, MCA, is amended to read:

"28-2-2103. Payment to contractor and subcontractor. (1) (a) ~~If a contractor performs a construction contract according to the terms of the contract and requests, either directly to the owner or to owner's representative, payment for performance of the contract, the owner shall pay the contractor, within 30 days after receipt by the owner or the owner's representative of the request for payment, for work performed or materials provided in accordance with the contract. Except as provided in [section 2], each construction contract governed by this section must define, within the contract, a monthly billing cycle for the contractor to submit monthly progress payment requests and final payment requests to the owner. The contractor shall submit payment requests to the owner. Payment requests must be based upon actual or estimated work performed and materials supplied during the preceding monthly billing cycle. This requirement does not preclude an owner from mutually agreeing with the contractor to prepay for materials. The owner is considered to have received a payment request when the payment request is submitted to any person designated by the owner in the contract to receive the payment request.~~

(b) *Except as provided in [section 2], a contractor's request for payment is considered approved by the owner 21 days after receipt of the request by the owner or the person designated in the contract by the owner to receive the payment request, unless, prior to that time, the owner provides the contractor with a written statement containing specific items in the request for payment that are being disapproved by the owner.*

(c) *The owner may disapprove the request for payment or a portion of the request based upon a claim of:*

(i) *unsatisfactory job progress;*

(ii) *failure to remedy defective construction work or materials;*

(iii) *disputed work or materials;*

(iv) *failure to comply with material provisions of the construction contract or accompanying documents, including but not limited to payroll certifications, lien releases, warranties, material certifications, and test data;*

(v) *failure of a contractor to make timely payment for claims, including but not limited to claims for labor, equipment, materials, subcontracts, taxes, fees, professional services, rent, and royalties;*

(vi) *damage to the owner; or*

(vii) *the existence of reasonable evidence that the construction contract cannot be completed for the unpaid balance of the contract sum.*

(d) *An owner may only withhold an amount from a payment that is sufficient to pay the direct expenses that the owner may reasonably expect will be necessary to correct any claim based on the items set out in subsection (1)(c).*

(e) *A written statement by an owner must be furnished to the contractor specifying a condition that is listed in subsection (1)(c) for which approval of the request for payment or a portion of the request for payment is being withheld. If an owner disapproves only a portion of a request for payment, the remainder of the request for payment must be considered approved.*

(f) Except as provided in [section 2], if an owner approves all or a portion of a contractor's request for payment as provided in subsection (1)(b), the owner shall pay the contractor the approved amount within 7 days after the contractor's request for payment is approved.

(g) Upon written request of a subcontractor who has not been paid for work in accordance with the provisions of subsection (2), an owner shall notify the subcontractor of a progress payment or final payment made to the general contractor.

(h) Payment is not required under this subsection (1) unless the contractor provides the owner with a billing statement or estimate for the work performed or the material supplied in accordance with the terms of the contract.

(2) (a) Within ~~3-working~~ 7 days after a contractor receives a periodic or final payment from an owner or a state agency, the contractor shall pay the subcontractor, if any, the full amount due the subcontractor in accordance with the subcontract for work performed or materials provided in accordance with that subcontract.

(b) Payment is not required under this subsection (2) unless the subcontractor provides the contractor a billing statement or invoice for work performed or materials supplied pursuant to the terms of the subcontract.

(c) Prior to submitting a monthly or final pay application to the owner, the general contractor may disapprove the subcontractor's request for payment or a portion of the request based upon a written claim of any of the conditions listed in subsection (1)(c).

(3) (a) Within ~~3-working~~ 7 days after a subcontractor receives a periodic or final payment from a contractor, the subcontractor shall pay another subcontractor, if any, the full amount due the subcontractor under the subcontract for work performed or materials provided in accordance with that subcontract.

(b) Payment is not required under this subsection (3) unless the subcontractor provides the contractor a billing statement or invoice for work performed or materials supplied pursuant to the terms of the subcontract."

Section 3. Alternative billing cycle. (1) A construction contract may provide for a billing cycle other than a monthly billing cycle if the construction contract specifically sets forth another billing cycle and either of the following applies:

(a) a notice in substantially the following form, setting forth the other billing cycle, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of payment requests in billing cycles other than once a month. Payment requests for this contract must be submitted as follows:

_____ ; or

(b) a notice in substantially the following form, setting forth the other billing cycle, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of payment requests in billing cycles other than once a month. A written description of the other billing cycle applicable to the project is available from the owner or the owner's designated agent at (telephone number or address, or both), and the owner or the owner's designated agent must provide this written description on request.

(2) An owner may change the number of days to approve a contractor's payment request to later than 21 days after the date the payment request is submitted if:

(a) the construction contract in a clear and conspicuous manner specifically provides for a later approval date defined by a specified number of days after the payment request is submitted; and

(b) a notice in substantially the following form, setting forth the specified number of days, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Approval of Payment Request Provision

This contract allows the owner to approve the contractor's payment request within ___ days after it is received by the owner.

(3) An owner may make payments later than 7 days after the date that the contractor's request for payment is approved if:

(a) the construction contract in a clear and conspicuous manner specifically provides for a later payment defined by a specified number of days after approval; and

(b) a notice in substantially the following form, setting forth the specified number of days, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Extended Payment Provision

This contract allows the owner to make payment within ___ days after approval of the payments.

Section 4. Construction contracts — void provisions. (1) A provision, covenant, clause, or understanding that is in, collateral to, or affects a construction contract for a project in this state and that makes the contract subject to the laws of another state or that requires any litigation, arbitration, or other dispute resolution proceeding arising from a dispute pertaining to the contract to be conducted in another state is against the public policy of this state and is void and unenforceable.

(2) A provision, covenant, clause, or understanding that is in, collateral to, or affects a construction contract and that states that a party to the contract may not suspend performance under the contract or terminate the contract if another party to the contract fails to make prompt payments under the contract as provided in 28-2-2103 is against the public policy of this state and is void and unenforceable.

Section 5. Suspension of performance — termination. (1) (a) A contractor may suspend performance under a construction contract for failure by the owner to make timely payment of the amount approved pursuant to 28-2-2103, and the contractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A contractor shall provide written notice to the owner at least 7 calendar days before the contractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract.

(c) A contractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (1).

(d) A construction contract may not extend the time period for a contractor to suspend performance or terminate a construction contract under this subsection (1).

(2) (a) A subcontractor may suspend performance under a construction contract if the owner fails to make timely payment of amounts approved pursuant to 28-2-2103 for the subcontractor's work and the contractor fails to pay the subcontractor for the approved work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor shall provide written notice to the contractor and the owner at least 7 calendar days before the subcontractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract.

(c) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (2).

(d) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (2).

(3) (a) A subcontractor may suspend performance under a construction contract if the owner makes timely payment of amounts approved pursuant to section 28-2-2103 for the subcontractor's work but the contractor fails to pay the subcontractor for the approved work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (3).

(c) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (3).

(4) (a) A subcontractor may suspend performance under a construction contract if the owner declines to approve portions of the contractor's payment request pursuant to 28-2-2103 for the subcontractor's work and the reasons for the owner's refusal to approve are not the fault of or directly related to the subcontractor's work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (4).

(c) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (4).

(5) A subcontractor shall provide written notice to the contractor and the owner at least 7 calendar days before the subcontractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract between the contractor and subcontractor.

(6) A contractor or subcontractor that suspends performance as provided in this section is not required to furnish further labor, materials, or services until the contractor or subcontractor is paid the amount that was approved, together with any costs incurred for mobilization and project rescheduling resulting from the shutdown or restart of a project.

(7) Written notice required under this section must be considered to have been provided if either of the following occurs:

(a) the written notice is delivered in person to the individual or a member of the entity or to an officer of the corporation for which it was intended; or

(b) the written notice is delivered at or sent by any means that provides written, third-party verification of delivery to the last-known business address of the party receiving notice.

Section 6. Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 28, chapter 2, part 21, and the provisions of Title 28, chapter 2, part 21, apply to [sections 3 through 5].

Section 7. Applicability. [This act] applies to construction contracts entered into on or after October 1, 2003.

Approved April 9, 2003

CHAPTER NO. 275

[HB 684]

AN ACT REPEALING THE TERMINATION DATE OF A PROVISION ALLOWING THE TRANSFER OF A REVOKED COAL MINE OPERATING PERMIT; REPEALING SECTION 5, CHAPTER 522, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 5, Chapter 522, Laws of 2001, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2003

CHAPTER NO. 276

[SB 97]

AN ACT REQUIRING THE COUNTY SUPERINTENDENT IN EACH COUNTY TO REPORT THE REVENUE AMOUNTS USED TO ESTABLISH THE LEVY REQUIREMENTS FOR THE COUNTYWIDE TRANSPORTATION AND RETIREMENT FUNDS TO THE

SUPERINTENDENT OF PUBLIC INSTRUCTION; PROVIDING THAT BUDGETING PROCEDURES APPLY TO COUNTY FUNDS SUPPORTING SCHOOL DISTRICT TRANSPORTATION AND RETIREMENT OBLIGATIONS; AMENDING SECTIONS 20-3-209, 20-9-101, 20-9-501, AND 20-10-146, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-209, MCA, is amended to read:

“20-3-209. Annual report. The county superintendent of each county shall submit an annual report to the superintendent of public instruction not later than the second Monday in September. The report must be completed on the forms supplied by the superintendent of public instruction and must include:

(1) the final budget information for each district of the county, as prescribed by 20-9-134(1);

(2) *the revenue amounts used to establish the levy requirements for the county school fund supporting school district transportation schedules, as prescribed by 20-10-146, and for the county school funds supporting elementary and high school district retirement obligations, as prescribed by 20-9-501;*

~~(2)~~(3) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(6); and

~~(3)~~(4) any other information that may be requested by the superintendent of public instruction that is within the superintendent's authority prescribed by this title.”

Section 2. Section 20-9-101, MCA, is amended to read:

“20-9-101. Application of budget system for districts and counties. The school budgeting procedure and provisions of this title apply to elementary and high school districts, *to county funds supporting school district transportation and retirement obligations,* and, whenever specified, to community college districts and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this title.”

Section 3. Section 20-9-501, MCA, is amended to read:

“20-9-501. Retirement fund. (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final

budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under section 245, Chapter 574, Laws of 2001;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education

cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(9) The levy for a community college district may be applied only to property within the district.

(10) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.

Section 4. Section 20-10-146, MCA, is amended to read:

“20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

- (i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;
 - (ii) oil and natural gas production taxes;
 - (iii) anticipated local government severance tax payments for calendar year 1995 production;
 - (iv) coal gross proceeds taxes under 15-23-703;
 - (v) countywide school transportation block grants distributed under section 246, Chapter 574, Laws of 2001;
 - (vi) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;
 - (vii) federal forest reserve funds allocated under the provisions of 17-3-213; and
 - (viii) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and
- (c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.

~~(4)~~(5) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments.”

Section 5. Effective date — applicability. [This act] is effective on passage and approval and applies to school fiscal years beginning on or after July 1, 2003.

Approved April 9, 2003

CHAPTER NO. 277

[SB 150]

AN ACT REVISING AND CLARIFYING LOCAL GOVERNMENT BONDING AND ASSESSMENT LAWS; CLARIFYING REFUNDINGS CONCERNING VARIABLE RATES; PROVIDING PROTEST PROCEDURES FOR PROPERTY CREATED AS A CONDOMINIUM UNDER SPECIAL AND RURAL IMPROVEMENT DISTRICTS; REVISING THE DEFINITION OF “OWNER” FOR PURPOSES OF PROTESTING THE CREATION OR EXTENSION OF A SPECIAL OR RURAL IMPROVEMENT DISTRICT; REVISING THE PROCESS FOR PAYMENT OF IMPROVEMENTS AND MAINTENANCE OF SPECIAL AND RURAL IMPROVEMENT DISTRICTS;

CLARIFYING CONDOMINIUM PROPERTY FOR ASSESSMENT PURPOSES FOR SPECIAL AND RURAL IMPROVEMENT DISTRICTS; ELIMINATING DEFINITIONS OF BOND FORMS FOR SPECIAL AND RURAL IMPROVEMENT DISTRICTS; CLARIFYING THE TYPES OF INVESTMENT SECURITIES AVAILABLE IN CERTAIN REFUNDINGS; CLARIFYING CROSSOVER REFUNDING; AMENDING SECTIONS 7-7-2304, 7-7-2316, 7-7-4304, 7-7-4316, 7-7-4502, 7-12-2109, 7-12-2120, 7-12-2161, 7-12-2168, 7-12-2171, 7-12-4110, 7-12-4174, 7-12-4203, 7-13-114, 7-13-3043, 7-14-4712, 7-14-4732, 17-5-2102, AND 20-9-412, MCA; REPEALING SECTIONS 7-12-2110 AND 7-12-4111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2304, MCA, is amended to read:

“7-7-2304. Interest rate on refunding general obligation bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the outstanding bonds that are to be refunded. *In determining whether the refunding bonds satisfy the savings requirements provided for in this section:*

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), then the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest in excess of the rate on the ~~refunded~~ bonds *being refunded* if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the county.

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county.”

Section 2. Section 7-7-2316, MCA, is amended to read:

“7-7-2316. Advance refunding bonds. (1) The board of county commissioners may issue refunding bonds pursuant to this section to refund outstanding bonds in advance of the date on which ~~such~~ the bonds mature or are subject to redemption, provided *that* the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale ~~thereof~~ *of the refunding bonds*, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state. ~~Funds so~~

(2) Except as provided in subsection (3), the funds deposited shall must be invested in securities ~~which~~ *that* are general obligations of the United States or the principal and interest of which are guaranteed by the United States and ~~which~~ *that* mature or are callable at the option of the holder on ~~such~~ *those* dates and bear interest at ~~such~~ *those* rates and are payable on ~~such~~ *the* dates ~~as shall~~

~~be that~~ are required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each ~~refunded bond being refunded~~ to its maturity or redemption date, if called for redemption, ~~and to pay the principal thereof of the bond~~ at maturity or upon ~~such the~~ redemption date, and to pay any redemption premium.

(3) *If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (2) or in a money market fund composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202(3).*

(4) ~~The escrow account shall be~~ is irrevocably appropriated to the payment of the principal of and interest and redemption premium, ~~if any, on the refunded bonds being refunded.~~ Funds ~~to the credit of~~ in the sinking fund account for the payment of the ~~refunded bonds being refunded~~ and not required for the payment of principal of or interest ~~thereon~~ on the bonds being refunded due prior to issuance of the refunding bonds may be appropriated by the county to the escrow account. The county may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds that are refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-2203 or any other debt limitation.”

Section 3. Section 7-7-4304, MCA, is amended to read:

“7-7-4304. Interest rate on refunding general obligation bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the interest rate of the outstanding bonds to be refunded. *In determining whether the refunding bonds satisfy the savings requirements provided for in this section:*

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), then the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest in excess of the rate on the ~~refunded~~ bonds *being refunded* if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the city or town.

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county.”

Section 4. Section 7-7-4316, MCA, is amended to read:

“7-7-4316. Advance refunding bonds. (1) A city or town may issue refunding bonds pursuant to this section to refund outstanding bonds in advance of the date on which ~~such the~~ bonds mature or are subject to redemption, provided that *the* proceeds of the refunding bonds, less any accrued

interest or premium received upon the sale ~~thereof~~ of the refunding bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or ~~out~~ outside of the state. ~~Funds so~~

(2) *Except as provided in subsection (3), the funds deposited shall must be invested in securities ~~which~~ that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and ~~which~~ that mature or are callable at the option of the holder on ~~such~~ those dates and bear interest at ~~such~~ those rates and are payable on ~~such~~ the dates as ~~shall~~ be that are required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each ~~refunded~~ bond being refunded to its maturity or redemption date, if called for redemption, and to pay the principal ~~thereof~~ of the bond at maturity or upon ~~such~~ the redemption date, and to pay any redemption premium.*

(3) *If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (2) or in a money market fund composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202(3).*

(4) *The escrow accounts ~~shall~~ be irrevocably appropriated to the payment of the principal of and interest and redemption premium, if any, on the ~~refunded~~ bonds being refunded. Funds to the credit of in the sinking fund account for the payment of the ~~refunded~~ bonds being refunded and not required for the payment of principal of or interest ~~thereon~~ on the bonds being refunded due prior to issuance of the refunding bonds may be appropriated by the city or town to the escrow account. The city or town may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds that are refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-4201 or any other debt limitation."*

Section 5. Section 7-7-4502, MCA, is amended to read:

"7-7-4502. Interest rates on refunding revenue bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from ~~such~~ the computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds being refunded ~~thereby~~, computed to their respective stated maturity dates. *In determining whether the refunding bonds satisfy the savings requirements provided for in this section:*

(a) *if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or*

(b) *if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), then the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.*

(2) Refunding bonds may bear interest at a rate lower or higher than the bonds *being* refunded ~~thereby~~ if:

(a) they are issued to refund matured principal or interest for the payment of which ~~revenues~~ *revenue* on hand ~~are~~ *is* not sufficient;

(b) the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension and the lien of ~~such~~ *the* new bonds upon the ~~revenues~~ *revenue* of the undertaking must be junior and subordinate to the lien of the outstanding bonds *being* refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding; or

(c) the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the municipality.”

Section 6. Section 7-12-2109, MCA, is amended to read:

“7-12-2109. Right to protest creation or extension of district. (1) At any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for ~~said~~ *the* work may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. ~~Such~~ *The* protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property. The protest must be delivered to the county clerk, who shall endorse ~~thereon~~ *on the protest document* the date of its receipt by ~~him~~ *the county clerk*.

(2) (a) *For purposes of this section, “owner” means, as of the date a protest is filed, the record owner of fee simple title to the property.*

(b) *The term does not include a tenant of or other holder of a leasehold interest in the property.”*

Section 7. Protest procedures for property created as condominium. (1) Whenever property created as a condominium is included within the boundaries of a proposed district and the proposed work or the creation of the district relates to or affects property created as a condominium, and not solely a certain unit in the condominium, the owner of the property created as a condominium that is entitled to protest under this part is collectively the owners of all units having an undivided ownership interest in the common elements of the condominium.

(2) An owner of property created as a condominium may protest against the proposed work or against the extent or creation of the district to be assessed, or both, only through a president, vice president, secretary, or treasurer of the condominium owners’ association who timely presents to the county clerk in accordance with 7-12-2109:

(a) a writing identifying the condominium property;

(b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;

(c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and

(d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners’ association certifying that the votes of the

unit owners as evidenced by the signatures of the owners are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the proposed work or against the extent or creation of the district, or both.

(3) Each holder of title to a unit in a condominium that is within a proposed district is entitled to notice of the passage of the resolution of intention as provided in this part and, if the district is created and assessments levied, assessments must be levied against the units in the condominium as provided in this part.

Section 8. Section 7-12-2120, MCA, is amended to read:

"7-12-2120. Maintenance of improvements. (1) Whenever ~~any~~ sanitary or storm sewers, lights or light systems, waterworks plants, water systems, sidewalks, or any other special improvements petitioned for or created by the state or federal government have been made, built, constructed, erected, or accomplished as provided in this part, ~~it is hereby made the duty of the board of county commissioners under whose jurisdiction the district was created or supervised or directed to shall~~ adequately and suitably maintain and preserve ~~said~~ the improvements and ~~to fully keep the same~~ *keep those improvements* in proper repair and operation, by contract or otherwise, ~~in such way or manner as the board shall deem suitable and proper.~~

(2) The whole cost of maintaining, preserving, and repairing ~~of said~~ improvements in any improvement district ~~shall~~ *may, in the discretion of the board,* be paid by assessing the entire district in the method provided for by 7-12-2108."

Section 9. Section 7-12-2161, MCA, is amended to read:

"7-12-2161. Payment of maintenance costs — resolution for assessment and for change of boundaries — assessment for administrative costs. (1) ~~It is the duty of the~~ *The* board of county commissioners ~~to shall~~ estimate, as near as practicable, the cost of maintaining, preserving, or repairing the improvements in each district for each year beginning January 1 or another time as ~~it~~ *may* appear necessary.

(2) ~~Before~~ *The board may, before* the first Monday in September of each year, ~~the board shall~~ pass and finally adopt a resolution levying and assessing all the property within the district with an amount equal to the whole cost of maintaining, preserving, or repairing the improvements within the district. ~~The~~ *An assessment authorized by the board* must be proportioned as provided in 7-12-2108. *In lieu of an assessment, the board shall otherwise provide for the whole cost of maintaining, preserving, or repairing the improvements in the district.*

(3) The resolution levying assessments to defray the cost of maintenance, preservation, or repair of improvements must be prepared and certified to in substantially the same manner as a resolution levying assessments for making, constructing, and installing the improvements in the special improvement district.

(4) The board may change by resolution, not more than once a year, the boundaries of any maintenance district.

(5) The board shall include in the estimated cost of maintaining the district the lesser of \$500 or 5% of the annual assessment of the district. The amount determined by the board under this subsection is to defray the costs incurred by the county in administering the maintenance district and is a cost of

maintenance. The board shall annually pay the amount determined under this subsection to the county treasurer for deposit in the county general fund.”

Section 10. Section 7-12-2168, MCA, is amended to read:

“7-12-2168. Assessments and certain other charges as liens. (1) ~~Any~~ A special assessment made and levied to defray the cost and expenses of ~~any of~~ the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, ~~shall constitute~~ *constitutes* a lien upon and against the property upon which ~~such~~ *the* assessment is made and levied from and after the date of the passage of the resolution levying ~~such~~ *the* assessment. This lien can only be extinguished by payment of ~~such~~ *the* assessment, with all penalties, costs, and interest.

(2) ~~Any~~ A special assessment levied and made for any of the purposes mentioned in 7-12-2120 and 7-12-2161, together with all costs and penalties, ~~shall constitute~~ *constitutes* a lien upon and against the property upon which ~~said~~ *the* assessment is made and levied from and after the date of the final passage and adoption of the resolution levying ~~the same, which~~ *assessment*. ~~The lien can only be~~ *is* extinguished *only* by payment of ~~such~~ *the* assessment, with all penalties, costs, and interest.

(3) *For assessment purposes, whenever property created as a condominium is included within the boundaries of a district, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of an undivided ownership interest must be as set forth in the condominium declaration.”*

Section 11. Section 7-12-2171, MCA, is amended to read:

“7-12-2171. Details relating to rural improvement district bonds and warrants—definitions of bond forms. (1) (a) The bonds and warrants must be drawn against either the construction or maintenance fund created for the special improvement district and must bear interest from the date of registration until called for redemption or paid in full. Bonds or warrants sold at a private, negotiated sale may bear interest at a rate varying periodically at the time or times and on the terms determined by the board of county commissioners. The terms determined by the board of county commissioners may include the establishment of a maximum rate of interest or the convertibility to a fixed rate of interest.

(b) Variable rate bonds may be sold at a private negotiated sale if the principal amount of the bonds is \$500,000 or less and the board of county commissioners obtains separate written opinions from underwriters of Montana rural improvement district bonds stating the bonds are not marketable through a competitive bond sale. Bonds sold in principal amounts below \$250,000 do not require a marketability opinion.

(c) The interest must be payable annually or semiannually, at the discretion of the board of county commissioners, on the dates that the board prescribes. The warrants or bonds must bear the signatures of the presiding officer of the board and the county clerk and may bear the corporate seal of the county. The warrants or bonds must be registered in the office of the county clerk and the county treasurer, and if interest coupons are attached to the warrants or bonds, ~~they~~ *the interest coupons* must also be registered and ~~shall~~ *must* bear the

signatures of the presiding officer of the board and the county clerk. The coupons may bear the facsimile signatures of the officers in the discretion of the board.

(2) The bonds must be in denominations of \$100 or fractions or multiples of \$100, may be issued in installments, and may extend over a period not to exceed 30 years. However, if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies to pay principal and interest on the bonds.

~~(3) As used in this part, unless the context clearly indicates otherwise, the following definitions apply:~~

~~(a) "Amortization bonds" means the form of bonds that bear interest at a fixed rate and on which:~~

~~(i) a part of the principal must be paid each time that interest becomes payable;~~

~~(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;~~

~~(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;~~

~~(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and~~

~~(v) the initial payment may be larger than subsequent payments if the increase represents interest accrued over an additional period not greater than 6 months.~~

~~(b) "Serial bonds" means a bond issue payable in semiannual or annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding five times the principal amount of the bonds maturing in the immediately preceding installment."~~

Section 12. Section 7-12-4110, MCA, is amended to read:

"7-12-4110. Protest against proposed work or district. (1) At any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for ~~said~~ the work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both.

(2) ~~Such~~ A protest must be in writing, identify the property in the district owned by the protestor, and be signed by all the owners of the property. The protest must be delivered to the clerk of the city or town council or commission not later than 5 p.m. of the last day within ~~said~~ the 15-day period. ~~Said~~ The clerk shall endorse ~~thereon~~ on the protest document the date and hour of its receipt by ~~him~~ the clerk.

(3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property."

Section 13. Protest procedures for property created as condominium. (1) Whenever property created as a condominium is included within the boundaries of a proposed district and the proposed work or the creation of the district relates to or affects property created as a condominium,

and not solely a certain unit in the condominium, the owner of the property created as a condominium that is entitled to protest under this part is collectively the owners of all units having an undivided ownership interest in the common elements of the condominium.

(2) An owner of property created as a condominium may protest against the proposed work or against the extent or creation of the district to be assessed, or both, only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the clerk of the city or town council or commission in accordance with 7-12-4110:

- (a) a writing identifying the condominium property;
- (b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;
- (c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and
- (d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners as evidenced by the signatures of the owners are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the proposed work or against the extent or creation of the district, or both.

(3) Each holder of title to a unit in a condominium that is within a proposed district is entitled to notice of the passage of the resolution of intention as provided in this part and, if the district is created and assessments levied, assessments must be levied against the units in the condominium as provided in this part.

Section 14. Section 7-12-4174, MCA, is amended to read:

"7-12-4174. Inclusion and assessment of unplatted, undedicated, or unsurveyed land in improvement district — inclusion of condominium property. (1) Whenever ~~any~~ *an* unplatted, undedicated, or unsurveyed lot, piece, or parcel of land that separates one platted part of the city from another platted part of ~~said~~ *the* city, lying wholly within the boundaries of any city or town and except land owned by the United States, ~~shall abut or border~~ *abuts or borders* upon any special improvement district or ~~be~~ *is* included within the boundaries of any special improvement district of ~~such~~ a city or town, the city or town council may ~~cause the same to be included within and made a part of such~~ *include the land within a* special improvement district in the same manner as other property ~~within such~~ *is included within the* special improvement district ~~and~~. *The special improvement district may assess the same included land* for its proportionate share of the cost of making or maintaining ~~such~~ *those* improvements in the same manner as other property within ~~such~~ *the* special improvement district.

(2) *For assessment purposes, whenever property created as a condominium is included within the boundaries of any special improvement district, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration.*"

Section 15. Section 7-12-4203, MCA, is amended to read:

“7-12-4203. Details relating to special improvement district bonds and warrants—definitions of bond forms. (1) (a) The bonds and warrants must be drawn against the special improvement district fund created for the district and must bear interest from the date of registration until called for redemption or paid in full. Bonds or warrants sold at a private, negotiated sale may bear interest at a rate varying periodically at the time or times and on the terms determined by the governing body of the municipality. The terms determined by the governing body of the municipality may include the establishment of a maximum rate of interest or the convertibility to a fixed rate of interest.

(b) Variable rate bonds may be sold at a private negotiated sale if the principal amount of the bonds is \$500,000 or less and the governing body of the municipality obtains separate written opinions from underwriters of Montana special improvement district bonds stating the bonds are not marketable through a competitive bond sale. Bonds sold in principal amounts below \$250,000 do not require a marketability opinion.

(c) The interest must be payable annually or semiannually, at the discretion of the governing body of the municipality, on the dates that the governing body prescribes. The warrants or bonds must bear the signatures of the mayor and clerk and may bear the corporate seal of the city. The warrants or bonds must be registered in the office of the clerk and treasurer, and if interest coupons are attached to the warrants or bonds, they must also be registered and bear the signatures of the mayor and clerk.

(2) The bonds must be in denominations of \$100 or fractions or multiples of \$100, may be issued in installments, and may extend over a period not to exceed 20 years or, if refunding bonds are issued pursuant to 7-12-4194, over a period ending not later than 30 years after the date that the bonds to be refunded were issued. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the city first levies assessments to pay principal and interest on the bonds.

~~(3) As used in part 41 and this part, unless the context clearly indicates otherwise, the following definitions apply:~~

~~(a) “Amortization bonds” means the form of bonds that bear interest at a fixed rate and on which:~~

~~(i) a part of the principal must be paid each time that interest becomes payable;~~

~~(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;~~

~~(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;~~

~~(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and~~

~~(v) the initial payment may be larger than subsequent payments if the increase represents interest accrued over an additional period not greater than 6 months.~~

~~(b) “Serial bonds” means a bond issue payable in semiannual or annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds~~

maturing in each installment not exceeding five times the principal amount of the bonds maturing in the immediately preceding installment.”

Section 16. Section 7-13-114, MCA, is amended to read:

“7-13-114. Applicable provisions of laws relating to rural improvement districts. The provisions of 7-12-2101, 7-12-2107, ~~7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), and 7-12-2169 and 7-12-2171 through 7-12-2174~~ pertaining to rural improvement districts apply under the provisions of this part unless in conflict with the provisions of this part.”

Section 17. Section 7-13-3043, MCA, is amended to read:

“7-13-3043. Applicable provisions of laws relating to rural improvement districts. The provisions of 7-12-2101, 7-12-2107, ~~7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), 7-12-2169, and 7-12-2171 through 7-12-2174~~ pertaining to rural improvement districts apply to this part unless in conflict with the provisions of this part.”

Section 18. Section 7-14-4712, MCA, is amended to read:

“7-14-4712. Procedure upon receipt of petition from all property owners within proposed district. If a petition for the formation of an improvement district under the provisions of 7-14-4711 is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying the ownership and making a finding of the fact, shall adopt a resolution of intention to order the improvement, as provided in 7-12-4104 and 7-12-4117, and may adopt the resolution ordering the improvement pursuant to 7-14-4711 through 7-14-4723 without the publication of the resolution of intention provided for in 7-12-4106. However, if special improvement district bonds are proposed to be issued and secured by the revolving fund, the requirements of 7-12-4106, 7-12-4108 through ~~7-12-4110, 7-12-4112 through 7-12-4114, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, and 7-12-4225~~ must be met by the governing body.”

Section 19. Section 7-14-4732, MCA, is amended to read:

“7-14-4732. Procedure upon receipt of petition for creation of offstreet parking district. (1) If a petition for the formation of an improvement district for the leasing, improvement, or operation and maintenance of an offstreet parking site is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying the ownership and making a finding of fact, shall adopt a resolution of intention to order the improvement, pursuant to the provisions of 7-12-4104 and 7-12-4117, and may adopt the resolution ordering the improvement pursuant to 7-12-4114 without the publication of the resolution of intention provided for in 7-12-4106. However, if special improvement district bonds are proposed to be issued and secured by the revolving fund, the requirements of 7-12-4106, 7-12-4108 through ~~7-12-4110, 7-12-4112 through 7-12-4114, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, and 7-12-4225~~ must be met by the governing body.

(2) If a petition for the formation of an improvement district for offstreet parking purposes and for the leasing of sites and improvement, operation, and

maintenance of sites is signed by the owners of a majority of the frontage of the property proposed to be contained within the limits of the assessment district and is presented to the governing body, the governing body shall adopt a resolution of intention ordering the proposed improvement and publish the resolution pursuant to the provisions of 7-12-4104 and 7-12-4106.”

Section 20. Section 17-5-2102, MCA, is amended to read:

“17-5-2102. Crossover refunding bonds authorized. (1) ~~Any~~ A public body authorized to issue refunding obligations may issue bonds pursuant to this part without regard to the limitations contained in any other law relating to:

- (a) the establishment of an escrow account for the obligations to be refunded;
- (b) the giving of a notice of redemption for the obligations to be refunded and redeemed; or
- (c) the application of the proceeds of the refunding obligations.

(2) The proceeds of bonds, less any proceeds applied to payment of costs of issuance or refunding, must be deposited in a sinking fund account irrevocably appropriated to the payment of principal of and interest on the refunding obligations until the crossover date. The sinking fund account must be maintained as an escrow account with a suitable financial institution within or outside the state and amounts in it must be invested in securities that are direct obligations of the United States or on which the payment of the principal and interest is guaranteed by the United States. In the resolution authorizing the issuance of the bonds, the governing body may pledge to their payment any source of payment of the obligations to be refunded. In the case of general obligation bonds, property taxes must be levied and appropriated to the sinking fund account in the amounts needed, together with estimated investment income from money in the sinking fund account and any other ~~revenues~~ *revenue* available upon discharge of the obligations to be refunded, to pay when due the principal of and interest on the bonds. Funds pledged to the credit of the sinking fund for the obligations to be refunded and not required on the crossover date for the payment of principal, premium, or interest on the obligations to be refunded may be appropriated by the public body to the sinking fund account for the bonds.

(3) The public body may pay the reasonable costs and expenses of issuing bonds and of establishing and maintaining the escrow account.

(4) On the crossover date, obligations *that are* refunded pursuant to this part are no longer considered outstanding for purposes of any debt limitation if the provisions of subsection (5) are met. *Until the crossover date, the bonds do not count against any debt limitation if the provisions of subsection (5) are met. After the crossover date, the bonds must be considered outstanding for purposes of any debt limitation.*

(5) The securities in the escrow account must mature or be callable at the option of the holder on ~~such~~ *the crossover* date, bearing interest at ~~such~~ a rate, and payable on ~~such~~ *the dates as that are* necessary to provide sufficient funds, in addition to any cash retained in the escrow account, to pay *the following* when due:

- (a) the interest that will accrue on each refunded obligation to its maturity or redemption date, if called for redemption;
- (b) the principal of each refunded obligation at maturity or on the redemption date; and

(c) any redemption premium.”

Section 21. Section 20-9-412, MCA, is amended to read:

“20-9-412. Issuance of refunding bonds without election. (1) Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue refunding bonds, the trustees, at a regular meeting or a special meeting, shall adopt a resolution setting forth:

- (a) the facts regarding the outstanding bonds that are to be redeemed;
- (b) the reasons for issuing new bonds; and
- (c) the term and details of the new bond issue.

(2) After the adoption of the resolution, the trustees shall:

- (a) sell the bonds at a private negotiated sale; or
- (b) at their option, give notice of the sale of the new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election and sell the new bonds in open competitive bidding, by written bids or by sealed bids.

(3) Except for bonds refunded by a school district under the provisions of Title 17, chapter 5, part 16, including any variable rate finance program ~~so that~~ *is* authorized, bonds may not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least 1/2 of 1% a year less than the rate of interest in the bonds to be refunded or redeemed.

(4) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 20-9-408.

(5) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the district.

(6) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, provided *that* the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or ~~out~~ *outside* of the state.

Funds
(b) *Except as provided in subsection (6)(c), funds* deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on the dates and bear interest at the rates and *are* payable on the dates *that are* required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each ~~refunded~~ *being refunded* bond *being refunded* to its maturity or redemption date, if called for redemption, to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium.

(c) *If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (6)(b) or in a money market fund*

composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202(3).

(d) The escrow account must be irrevocably appropriated to the payment of the principal of and interest and redemption premium, ~~if any, on the refunded bonds being refunded.~~ Funds ~~to the credit of~~ in the debt service fund for the payment of the ~~refunded~~ *being refunded* and not required for the payment of principal of or interest on the bonds *being refunded* due prior to issuance of the refunding bonds may be appropriated by the district to the escrow account. The school district may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds *that are* refunded pursuant to this part are not to be considered outstanding for purposes of 20-9-406 or any other debt limitation."

Section 22. Codification instruction. (1) [Section 7] is intended to be codified as an integral part of Title 7, chapter 12, part 21, and the provisions of Title 7, chapter 12, part 21, apply to [section 7].

(2) [Section 13] is intended to be codified as an integral part of Title 7, chapter 12, part 41, and the provisions of Title 7, chapter 12, part 41, apply to [section 13].

Section 23. Repealer. Sections 7-12-2110 and 7-12-4111, MCA, are repealed.

Section 24. Effective date. [This act] is effective July 1, 2003.

Approved April 9, 2003

CHAPTER NO. 278

[SB 445]

AN ACT REPEALING THE TRANSITION SECTION OF THE DISTRICTING AND APPORTIONMENT PLAN THAT ASSIGNS HOLDOVER SENATORS TO NEW DISTRICTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, the Montana Constitution and the verbatim transcripts of the 1972 Constitutional Convention do not address the assignment of holdover senators to districts following the drawing of new legislative districts pursuant to Article V, section 14, of the Montana Constitution; and

WHEREAS, the Montana Supreme Court has consistently held that the Constitution is a limit on rather than a grant of legislative authority, beginning with State ex rel. Evans v. Stewart, 53 Mont. 18, 161 P. 309 (1916); and

WHEREAS, in spite of the lack of a constitutional limit on legislative authority, the Legislature has acquiesced in the assignment of holdover senators by the Districting and Apportionment Commission because of the fair and nonpartisan assignments that have traditionally occurred; and

WHEREAS, the districting plan submitted to the 58th Legislature for review and comment proposed to assign holdover senators on partisan basis for future partisan gain; and

WHEREAS, the Legislature enacted Senate Bill No. 258 as Chapter 4, Laws of 2003, to authorize the Legislature to assign holdover senators and prohibit the Districting and Apportionment Commission from assigning holdover

senators prior to the Districting and Apportionment Commission's adoption of its final plan.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 3 of the districting and apportionment plan of 2003, the transition provision assigning holdover senators to new legislative districts, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the districting and apportionment plan adopted by the districting and apportionment commission on February 5, 2003.

Approved April 9, 2003

CHAPTER NO. 279

[HB 474]

AN ACT PROVIDING THAT AN ADJUSTMENT OF THE RENTAL PRICE OF A MOTOR VEHICLE, TRAILER, OR SEMITRAILER, BASED ON THE AMOUNT REALIZED UPON THE SALE OR DISPOSITION OF THE MOTOR VEHICLE, TRAILER, OR SEMITRAILER, DOES NOT CREATE A SALE OR SECURITY INTEREST.

Be it enacted by the Legislature of the State of Montana:

Section 1. Contract rental price adjustment — not sale or security interest. In the case of a motor vehicle, trailer, or semitrailer, a transaction does not create a sale or security interest solely because it permits or requires that the rental price be adjusted either upward or downward under the agreement by reference to the amount realized upon the sale or other disposition of the motor vehicle, trailer, or semitrailer. To the extent that a conflict exists, this section supersedes any other provision of law.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 1, and the provisions of Title 61, chapter 3, part 1, apply to [section 1].

Approved April 10, 2003

CHAPTER NO. 280

[SB 118]

AN ACT GENERALLY REVISING THE LAWS GOVERNING LICENSE PLATES; PROHIBITING, WITH EXCEPTIONS, THE DISPLAY OF PRIOR DESIGNS OF NUMBER PLATES OR CERTAIN SPECIAL LICENSE PLATES AFTER ISSUANCE OF A NEW DESIGN; DELAYING THE NEW ISSUE OF NUMBER PLATES UNTIL 2006; INCREASING LICENSE PLATE FEES; REVISING THE REPORTING REQUIREMENTS PERTAINING TO HOLDERS OF AMATEUR RADIO OPERATOR LICENSE PLATES; REVISING THE REQUIREMENTS GOVERNING QUALIFICATION, ISSUANCE, AND RENEWAL OF GENERIC SPECIALTY LICENSE PLATES; ALLOWING COLLECTION AND DISBURSEMENT OF SPONSOR DONATION FEES BY COUNTY TREASURERS AND THE DEPARTMENT

OF REVENUE; EXPANDING THE VEHICLE TYPES ELIGIBLE FOR GENERIC SPECIALTY LICENSE PLATES; MAKING THE MONTANA GENERIC SPECIALTY LICENSE PLATE ACT PERMANENT; CLARIFYING SPECIAL LICENSE PLATE TYPES THAT MAY BE USED TO PERMANENTLY REGISTER A VEHICLE; AMENDING SECTIONS 61-3-301, 61-3-321, 61-3-332, 61-3-333, 61-3-424, 61-3-465, 61-3-473, 61-3-474, 61-3-475, 61-3-476, 61-3-477, 61-3-478, 61-3-479, 61-3-480, 61-3-481, AND 61-3-562, MCA; REPEALING SECTION 21, CHAPTER 402, LAWS OF 2001; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-301, MCA, is amended to read:

“61-3-301. Registration — license plate required — display. (1) Except as otherwise provided in this chapter, a person may not operate a motor vehicle upon the public highways of Montana unless the vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that vehicles authorized to display demonstrator plates under 61-4-125 or 61-4-129 may have only one number plate conspicuously displayed on the rear. A person may not display on a vehicle at the same time a number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) A person may not purchase or display on a vehicle a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county of the person's permanent residence at the time of application for registration. However, the owner of a motor vehicle requiring a license plate on a motor vehicle used in the public transportation of persons or property may make application for the license in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate issued bearing the number assigned to that county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to ~~use~~:

(a) *display* license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute, ~~or to~~;

(b) repaint old license plates to resemble current license plates; *or*

(c) *display a prior design of number plates issued under 61-3-332(4)(a) or special license plates issued under 61-3-332(10) or 61-3-421 more than 18 months after a new design of number plates or special license plates has been issued, except as provided in 61-3-332(4)(c) and (4)(d), 61-3-448, or 61-3-468.*

(4) This section does not apply to a vehicle exempt from taxation under 15-6-215 or subject to the registration fee or fee in lieu of tax under 61-3-520.

(5) A person violating these provisions is guilty of a misdemeanor and is subject to the penalty prescribed in 61-3-601.

(6) *For the purposes of this section, “conspicuously displayed” means that the required license plates are obviously visible and firmly attached to:*

(a) *the front and the rear bumper of a motor vehicle equipped with front and rear bumpers; or*

(b) *other clearly visible locations on the front and the rear exteriors of a motor vehicle.*”

Section 2. Section 61-3-321, MCA, is amended to read:

“61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

- (a) light vehicles under 2,850 pounds, \$13.75;
 - (b) trailers with a declared weight of less than 2,500 pounds and semitrailers, \$8.25;
 - (c) motor vehicles registered pursuant to 61-3-411 that are:
 - (i) ~~over~~ 2,850 pounds *and over*, \$10; and
 - (ii) under 2,850 pounds, \$5;
 - (d) off-highway vehicles registered pursuant to 23-2-817, \$9;
 - (e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, \$18.75;
 - (f) logging trucks less than 1 ton, \$23.75;
 - (g) motor homes, \$22.25;
 - (h) motorcycles and quadricycles, \$9.75;
 - (i) trailers and semitrailers between 2,500 and 6,000 pounds, \$11.25;
 - (j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, \$16.25;
 - (k) travel trailers, \$11.75; and
 - (l) recreational vehicles, \$3.50.
- (2) If a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.
- (3) An additional fee of \$5 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.
- (4) A fee of ~~\$2~~ \$5 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.
- (5) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.
- (6) (a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.
- (b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(8) A person qualifying under 61-3-332(10)(d) is exempt from the fees required under this section.

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

Section 3. Section 61-3-332, MCA, is amended to read:

"61-3-332. (Temporary) Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in 61-3-479 and subsections (4)(c) and (4)(d) of this section, all number plates for motor vehicles must be issued for a ~~maximum~~ *minimum* period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For motorcycles, quadricycles, and light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall

manufacture the newly designed number plates for issuance after December 31, ~~1999~~ 2005, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, ~~2000~~ 2006, the department shall manufacture and issue new number plates ~~every~~ after the existing plates have been used for a minimum period of 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

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

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must

begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

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

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national

guard veteran license plate fee of \$10. The additional fee must be distributed in accordance with the provisions of subsection (12).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:

(A) a special license plate under this section with the purple heart decal or a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is \$5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).

(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is \$5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the \$10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).

(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.

(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.

(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100%

disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.

(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of \$10.

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.

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

(12) Fees collected under this section must be deposited in the state general fund. (Terminates July 1, 2005—sec. 21, Ch. 402, L. 2001.)

61-3-332. (Effective July 1, 2005) Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) ~~In addition to special license plates and collegiate license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:~~

~~(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;~~

~~(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";~~

~~(c) trucks, bearing the letter "T" or the word "TRUCK";~~

~~(d) trailers, bearing the letters "TR" or the word "TRAILER";~~

~~(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";~~

~~(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";~~

~~(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";~~

~~(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and~~

~~(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".~~

~~(3) (a) Except as provided in subsections (4)(c) and (4)(d), all number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.~~

~~(b) For motorcycles, quadricycles, and light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.~~

~~(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.~~

~~(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.~~

~~(c) A light vehicle that is registered for a 24 month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24 month registration period.~~

~~(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.~~

~~(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.~~

~~(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.~~

~~(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the~~

markings provided in this section, number plates must bear the following distinctive markings:

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

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

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

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

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor

members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

~~(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.~~

~~(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of \$10. The additional fee must be distributed in accordance with the provisions of subsection (12).~~

~~(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.~~

~~(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:~~

~~(A) a special license plate under this section with the purple heart decal or a design or decal displaying the letters "DV"; or~~

~~(B) one set of any other military related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.~~

~~(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is \$5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).~~

~~(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is \$5 and is in lieu of other taxes and fees for that vehicle~~

~~under this chapter, except for the \$10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).~~

~~(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.~~

~~(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.~~

~~(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.~~

~~(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex prisoner of war" or an abbreviation that the department considers appropriate.~~

~~(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex prisoner of war under this subsection (10)(d).~~

~~(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex prisoner of war under this subsection (10)(d).~~

~~(iv) An ex prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex prisoner of war license plates.~~

~~(v) A surviving spouse of an ex prisoner of war may retain the special license plates that have been issued to the ex prisoner of war if the spouse complies with the provisions of 61-3-457.~~

~~(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.~~

~~(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be~~

~~issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:~~

~~(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other than dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:~~

~~(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or~~

~~(B) a symbol representing the purple heart medal.~~

~~(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.~~

~~(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of \$10.~~

~~(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.~~

~~(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.~~

~~(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.~~

~~(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.~~

~~(12) Fees collected under this section must be deposited in the state general fund."~~

Section 4. Section 61-3-333, MCA, is amended to read:

“61-3-333. Replacing number plates. In the event of loss, mutilation, or destruction of number plates, ~~and/or~~ or validation devices, the owner of the registered motor vehicle may obtain from the department duplicates or replacements of the number plates upon filing a sworn declaration showing that fact and payment of a fee of ~~\$2~~ \$5. In the event of loss, mutilation, or destruction of pioneer plates, duplicates may be obtained in the same manner upon payment of a fee of \$5.”

Section 5. Section 61-3-424, MCA, is amended to read:

“61-3-424. List of amateur radio operators’ special operator license plates — distribution to public officials. The department shall, on or before July 1 of each year, furnish to the *disaster and emergency services division of the department of military affairs and the chief of the state highway patrol, to the director of civil defense, to the sheriff of each county in the state, to the chief of police of each incorporated city in the state, and to other public officials as the department considers necessary,* an *electronic record containing a county-based, alphabetically arranged list of the names, addresses, and license plate numbers and letters of each person to whom a special amateur radio operator license plate or a combined license plate has been issued, and it.* It is the duty of the ~~department, sheriffs, and chiefs of police to maintain and keep current the lists for public information and inquiry, particularly in relation to public emergencies~~ *disaster and emergency services division of the department of military affairs and the chief of the state highway patrol to retain this information for use in the event of a public emergency or other disruption of commonly used communication networks.”*

Section 6. Section 61-3-465, MCA, is amended to read:

“61-3-465. Issuance — application — additional fee — disposition. (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

- (a) compliance with 61-3-303, 61-3-311, and 61-3-312; and
- (b) payment to the county treasurer of:
 - (i) an initial application and manufacturing fee of ~~\$2.50~~ \$5, when required; and
 - (ii) an annual scholarship donation of \$20 for the benefit of the institution named in the application.

(2) Once each month, the county treasurer shall, as provided in 15-1-504, transfer to the department of revenue the total of the amounts collected for:

- (a) the initial application and manufacturing fee for deposit in the state general fund; and
- (b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.

(3) Once each month, the department of revenue shall distribute to the student academic scholarship fund or foundation of each institution an amount equal to the total donations credited to that institution and transferred to the department of revenue by the county treasurers during the preceding month.”

Section 7. Section 61-3-473, MCA, is amended to read:

“61-3-473. (Temporary) Definitions. As used in 61-3-472 through 61-3-481, the following definitions apply:

(1) "Generic specialty license plate" means a license plate ~~bearing that bears~~ the name, identifying phrase, or graphic of a sponsor, approved by the department, and that is issued by the department ~~to a person who is entitled to a special certificate of registration.~~

(2) "Governmental body" means a tribal government, state agency, local government, school district, or other political subdivision within this state.

(3) "Organization" means an association, corporation, group, or other entity:

(a) recognized by the internal revenue service as tax-exempt under 26 U.S.C. 501(c)(3); and

(b) that does not have as its primary focus sectarian activities, including but not limited to activities aimed at promoting the adoption of one or more religious or political viewpoints.

~~(4) "Special certificate of registration" means the certificate of motor vehicle registration issued in accordance with 61-3-479.~~

~~(5)~~(4) "Sponsor" means the governmental body or organization approved by the department to promote the sale and issuance of a generic specialty license plate.

~~(6)~~(5) "Tribal government" means the officially recognized government of an Indian tribe, nation, or other organized Indian group or community located in Montana that is exercising self-government powers and that is recognized as being eligible for services provided by the United States to Indians because of their status as Indians. ~~(Terminates June 30, 2005—sec. 21, Ch. 402, L. 2001.)~~

Section 8. Section 61-3-474, MCA, is amended to read:

"61-3-474. (Temporary) Responsibility for design of generic specialty license plates — numbering — rulemaking — approval — county designation by sticker — listing of plate sponsors. (1) The department shall:

(a) design the background and general format of generic specialty license plates;

(b) in consultation with the department of corrections, determine which license plate processing system is the most efficient and versatile manufacturing method for the production of generic specialty license plates;

(c) use a numbering system for generic specialty license plates that is distinctive from the numbering system required under 61-3-332 or used for collegiate license plates;

(d) adopt rules that prescribe:

(i) the minimum and maximum number of characters that a generic specialty license plate may display;

(ii) the general placement of the sponsor's name, identifying phrase, and graphic; and

(iii) any specifications or limitations on the use or choice of color or detail in the sponsor's graphic design.

(2) All sponsor names, identifying phrases, and graphics intended for use on generic specialty license plates must be approved by the department prior to the manufacture of the plates.

(3) Upon the issuance of generic specialty license plates, the department shall provide nonremovable stickers bearing the appropriate county

designation as provided in 61-3-332. The stickers must be affixed to the license plates in use in accordance with instructions by the department.

(4) The department shall maintain a list of the ~~organizations that it has approved as sponsors that have been approved to promote the sale and issuance of generic specialty license plates, including the name and address of a generic specialty license plate liaison for each organization~~ *the initial distribution date for sale of each sponsored generic specialty license plate, and the donation fee established by the sponsor for each sponsored generic specialty license plate.* The department shall, upon request, make copies of this list available to interested members of the public.

(5) The department may, in its discretion, revoke its previous approval of ~~an organization's~~ a sponsor's generic specialty license plate sponsorship if:

(a) the ~~organization~~ sponsor fails to comply with the provisions of 61-3-472 through 61-3-481 ~~or if~~;

(b) *fewer than 400 sets of a sponsor's generic specialty license plate have been sold or renewed in the 12-month period immediately preceding the third anniversary of the date of initial distribution of the sponsored generic specialty license plate; or*

(c) the department has reliable information that the ~~organization may~~ sponsor is no longer ~~be~~ qualified for sponsorship under 61-3-472 through 61-3-481.

(6) (a) *Upon revocation of a sponsor's generic specialty license plate sponsorship status, the issuance and sale of the sponsor's generic specialty license plates must be terminated and a donation fee may not be charged or collected upon registration renewal of a vehicle displaying previously issued generic specialty license plates affiliated with that sponsor.*

(b) *A person who owns a vehicle displaying valid generic specialty license plates affiliated with a sponsor whose sponsorship status has been revoked may continue to display those generic specialty license plates on the person's vehicle if the vehicle's registration is properly renewed in subsequent years and the plates remain legible.*

(c) *Following revocation of a sponsor's sponsorship status, the department may not issue duplicates of generic specialty license plates affiliated with that sponsor that are lost, destroyed, or mutilated. (Terminates June 30, 2005—sec. 21, Ch. 402, L. 2001.)*

Section 9. Section 61-3-475, MCA, is amended to read:

“61-3-475. (Temporary) Qualifications and approval of organization as sponsor. (1) To qualify as a sponsor of a generic specialty license plate, an organization shall:

(a) apply, through the organization's officers, for sponsorship on a form or in a format prescribed by the department;

(b) submit proof of good standing if the organization is required to be registered with the office of the secretary of state;

(c) designate one of its members as the organization's generic specialty license plate liaison. The liaison is responsible for all communications with the department regarding the organization's sponsorship of generic specialty license plates and shall file the liaison's name, address, and telephone number with the department ~~for the purposes provided for in 61-3-474(4).~~

(d) specify in its application the donation fee proposed by the organization for initial purchase of the organization's generic specialty license plate and for renewal of the organization's generic specialty license plate if the fee is required on renewal;

~~(d)~~*(e) submit to the department proof that is acceptable to the department that:*

(i) the organization is a nonprofit organization as demonstrated in its charter or bylaws or by an internal revenue service ruling. The department may request copies of an internal revenue service ruling to verify an organization's nonprofit status.

(ii) the primary purpose of the organization, except for an organization of military service veterans, is service to the community through specific programs that promote improving public health, education, or general welfare;

(iii) the organization's name, identifying phrase, or graphic that will be placed on the generic specialty license plate does not:

(A) invoke connotations offensive to good taste and decency;

(B) promote, advertise, or endorse a product, brand, or service provided for sale;

(C) infringe or otherwise violate a trademark, trade name, service mark, copyright, or other proprietary or property right; or

(D) obscure the generic specialty license plate letters or numbers that the department assigns as provided in 61-3-474(1)(c);

(iv) the organization's headquarters or base of operations is in this state or, if the organization is a chapter or branch of an international, national, or regional organization, the chapter or branch is in good standing and has authorization in writing from the parent organization to use the name and graphic of the parent organization; and

(v) the organization has an active telephone number listed under its name in at least one published Montana directory.

(2) The department may require a statement under oath from the officers of the organization that the organization is authorized to use the name, identifying phrase, and graphic submitted for display on a generic specialty license plate and that no infringement or violation of any property right exists, together with an agreement to defend and hold harmless the state of Montana, its employees, or its agents for any liability as a result of an infringement or violation of any property right.

(3) The department's approval or rejection of an organization's application for generic specialty license plate sponsorship must be based on the requirements provided in 61-3-472 through 61-3-481. The department shall state in writing the reasons for its rejection of an organization's application.

(4) An organization may apply for and be approved to sponsor only one generic specialty license plate design at any time. Once a minimum 4-year period has expired, an organization may apply to the department for approval of a new generic specialty license plate design along with submission of the fee required under 61-3-478(1).

(5) If the department approves the organization's new generic specialty license plate design, issuance and renewal of the previously approved generic specialty license plate must be discontinued, effective on the date of the initial

distribution of the newly approved generic specialty license plate design. (Terminates June 30, 2005 — sec. 21, Ch. 402, L. 2001.)

Section 10. Section 61-3-476, MCA, is amended to read:

“61-3-476. (Temporary) Qualification and approval of governmental body as sponsor. To qualify for sponsorship of a generic specialty license plate, a governmental body shall:

(1) apply for sponsorship through the executive body of a tribal government, the state agency director or department head, the commission or council of a local government or political subdivision, or the board of trustees of a school district on a form or in a format approved by the department;

(2) if the governmental body is a state agency, identify the statutory authority under which it is relying to seek sponsorship of a generic specialty license plate and specify the account in which any generic specialty license plate donations must be placed;

(3) designate one of its officers or employees as the governmental body's generic specialty license plate liaison. The liaison is responsible for all communications with the department regarding the governmental body's sponsorship of generic specialty license plates and shall file the liaison's name, address, and telephone number with the department ~~for the purposes provided for in 61-3-474(4). (Terminates June 30, 2005 — sec. 21, Ch. 402, L. 2001.)~~

Section 11. Section 61-3-477, MCA, is amended to read:

“61-3-477. (Temporary) Generic specialty license plate liaison — responsibilities. (1) Upon the department's approval of an organization's or a governmental body's proposed sponsorship of a generic specialty license plate, the generic specialty license plate liaison designated under 61-3-475(1)(c) and 61-3-476(3) shall submit to the department the sponsor's name, identifying phrase, and graphic that will appear on the generic specialty license plate.

(2) The generic specialty license plate liaison shall:

(a) verify and approve in writing the prototype or mockup of the ~~sponsoring organization's~~ sponsor's generic specialty license plate before it may be manufactured or issued by the department; and

(b) confirm, in writing, the donation fee established by the sponsor for initial purchase of the sponsor's generic specialty license plate and for renewal of the sponsor's generic specialty license plate if the fee is required on renewal.

~~(3) Subject to the provisions of 61-3-479, the generic specialty license plate liaison shall determine a person's eligibility to receive a generic specialty license plate and shall provide, on behalf of the sponsor, a written certificate of eligibility to an eligible person who has paid the required donation as determined by the sponsor and as provided in 61-3-480.~~

(3) *Once a sponsor's generic specialty license plate has been approved for manufacture and distribution, the donation fee established by the sponsor and confirmed by the liaison may not be changed unless a new plate design is authorized in accordance with 61-3-475. (Terminates June 30, 2005 — sec. 21, Ch. 402, L. 2001.)*

Section 12. Section 61-3-478, MCA, is amended to read:

“61-3-478. (Temporary) Generic specialty license plate sponsor fee — exception. (1) Except as provided in subsection (2), upon approval of an organization's application to sponsor a generic specialty license plate and before

a sponsor's generic specialty license plates may be manufactured, the department shall assess and the sponsor shall pay a ~~\$1,200~~ \$4,000 fee to reimburse the department of corrections for the prison industries training program for the initial costs incurred in producing the generic specialty license plates for the ~~sponsoring organization~~ sponsor.

(2) In lieu of the fee required in subsection (1), a minimum of 400 applications for a ~~sponsoring organization's~~ sponsor's generic specialty license plates must be filed and prepaid with the department before the generic specialty license plates may be manufactured and issued. ~~(Terminates June 30, 2005— sec. 21, Ch. 402, L. 2001.)~~

Section 13. Section 61-3-479, MCA, is amended to read:

~~“61-3-479. (Temporary) Special certificate of registration and issuance~~ Issuance of generic specialty license plates — qualifications.

(1) ~~The (a) Except as provided in subsection (1)(b), the department shall issue a special certificate of registration and set of generic specialty license plates to a person who applies if the person presents written certification, in a form prescribed by the department, from the sponsoring organization indicating that the person is eligible to receive the generic specialty license plates for a particular style of generic specialty license plates and pays the donation fee established by the plate sponsor and the administrative fee required in 61-3-480.~~

~~(2) If the sponsor is a governmental body that has a written agreement with the county treasurer pursuant to 61-3-480, the department shall issue a special certificate of registration and generic specialty license plates to an eligible person who applies if the person pays the donation specified by the governmental body to the county treasurer at the time of application.~~

~~(b) If the sponsor of a generic specialty license plate is not listed on the county collection report published by the department of revenue and required under 15-1-504 as of the initial distribution date for the sale of the sponsor's plates, the department shall require the sponsor to collect the initial donation fee from, and issue a special certificate of registration to, a person who is eligible to receive the sponsor's generic specialty license plates. The person shall present the special certificate of registration upon application for the generic specialty license plates.~~

~~(3)(2) A special certificate of registration and set of generic specialty license plates may be issued only for a light any vehicle, except a trailer of any size, a motorcycle, or a quadricycle.~~

~~(4) The department may issue a special certificate of registration and generic specialty license plates to joint owners of a motor vehicle if one of the owners is determined by the sponsor to be eligible and if the eligible owner's name appears on the vehicle's special certificate of registration.~~

~~(5)(3) (a) Except as provided in 61-3-472 through 61-3-481 and 61-3-562, a person who receives a special certificate of registration and generic specialty license plates is subject to the same rules and laws as those that govern number plates.~~

~~(b) Except as provided in 61-3-472 through 61-3-481 and 61-3-562, the department is subject to the same rules and laws as that govern the issuance of number plates.~~

~~(c) Generic specialty license plates issued under 61-3-472 through 61-3-481 are not subject to the maximum 4 year limitation provided in 61-3-332(3)(a) any maximum issuance or use limitation that may be imposed on number plates. (Terminates June 30, 2005— sec. 21, Ch. 402, L. 2001.)~~

Section 14. Section 61-3-480, MCA, is amended to read:

“61-3-480. ~~(Temporary)~~ Fees for generic specialty license plates — disposition. (1) In addition to the other fees and taxes imposed by law, an eligible person who applies for a generic specialty license plate shall pay an administrative fee of ~~\$10~~ \$15 and, except as provided in 61-3-479(1)(b), the donation fee specified by the sponsor.

(2) The county treasurer shall, upon receipt of the fee fees:

(a) deposit ~~\$2~~ \$5 of the \$15 administrative fee in the county general fund; and

(b) notwithstanding any other provisions of Title 7, Title 17, or this title and unless otherwise provided in 61-3-479(1)(b), accept the donation fee paid by the plate purchaser; and

(c) as provided in 15-1-504, once each month, transmit to the department of revenue for distribution:

~~(b)(i) remit \$8~~ \$10 of the \$15 administrative fee to the state general fund; and

(ii) all donation fees provided for in subsections (1) and (3), along with a schedule showing the number and type of generic specialty license plates issued and total donations received for the benefit of each sponsor of a generic specialty license plate issued or renewed, to each respective sponsor.

~~(2) An applicant for a generic specialty license plate sponsored by a state agency shall pay to the county treasurer the donation required by the state agency. The county treasurer shall remit the entire amount of the donation to the department of revenue for deposit in either the state general fund or the state special revenue fund to the credit of the sponsoring state agency.~~

(3) ~~If an additional~~ the donation fee is required by a state agency for sponsor upon renewal of generic specialty license plates sponsored by the state agency, the additional donation fee must be paid to the county treasurer upon renewal of registration and ~~remitted to the state agency transmitted to the department of revenue as prescribed in subsection (2).~~

~~(4) The county treasurer shall also collect from an applicant any donation required by a sponsoring local government, school district, or political subdivision if a written agreement exists between the county treasurer and the sponsoring local government, school district, or political subdivision. The agreement must:~~

~~(a) authorize the collection of the donations by the county treasurer;~~

~~(b) specify the amount of donation required for issuance and renewal of the generic specialty license plates; and~~

~~(c) provide for the disbursement of the revenue.~~

(4) Once each month, the department of revenue shall distribute to the generic specialty license plate liaison designated by a sponsor under 61-3-475(1)(c) or 61-3-476(3) an amount equal to the total donations credited to that sponsor and transferred to the department of revenue by the county treasurers during the preceding month. ~~(Terminates June 30, 2005 — sec. 21, Ch. 402, L. 2001.)~~

Section 15. Section 61-3-481, MCA, is amended to read:

“61-3-481. (Temporary) Generic specialty license plates — restrictions on use. (1) Generic specialty license plates may be issued by the department ~~only~~ in conjunction with the registration of ~~a light~~ any vehicle, *except a trailer of any size, a motorcycle, or a quadricycle.* The department may not issue generic specialty license plates without the motor vehicle having been registered.

(2) Generic specialty license plates may be used only as the official number plates for a motor vehicle. ~~(Terminates June 30, 2005 — sec. 21, Ch. 402, L. 2001.)”~~

Section 16. Section 61-3-562, MCA, is amended to read:

“61-3-562. Permanent registration — transfer of vehicle ownership — rules. (1) (a) ~~The~~ *Except as provided in subsection (1)(c),* the owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-561, may permanently register the vehicle upon payment of a \$50 registration fee, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicable fees imposed for each of the following:

- (i) junk vehicle disposal fees under 15-1-122(3)(a);
- (ii) weed control fees under 15-1-122(3)(b);
- (iii) the former county motor vehicle computer fees under 61-3-511;
- (iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;
- (v) if applicable, *special* license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406; *and*
- ~~(vi) if applicable, the amateur radio operator license plate fee under 61-3-422;~~
- ~~(vii) if applicable, the annual scholarship donation fee under 61-3-465; and~~
- ~~(viii)~~ (vi) senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional \$2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(c) *The following series of license plates may not be used for purposes of permanent registration of a vehicle:*

- (i) *Montana national guard license plates issued under 61-3-332(10)(a)(i);*
- (ii) *reserve armed forces license plates issued under 61-3-332(10)(b);*
- (iii) *license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(10)(g);*
- (iv) *amateur radio operator license plates issued under 61-3-422;*
- (v) *collegiate license plates issued under 61-3-465; and*
- (vi) *generic specialty license plates issued under 61-3-479.*

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer’s rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) distribute the \$50 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the department of revenue the amounts collected under this section, other than the local option vehicle tax or flat fee, for the purposes of 61-3-321(3) and 61-10-201. The county treasurer shall retain the local option vehicle tax or flat fee.

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of ownership under 61-3-201 and file an application for registration under 61-3-303. (Subsection (1)(b) terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)”

Section 17. Repealer. Section 21, Chapter 402, Laws of 2001, is repealed.

Section 18. Effective dates. (1) Except as provided in subsections (2) through (4), [this act] is effective July 1, 2003.

(2) [Sections 2, 4, and 6] are effective January 1, 2004.

(3) [Section 1] is effective October 1, 2003.

(4) [Sections 3, 5, 9, 11, 12, 19, and this section] are effective on passage and approval.

Section 19. Applicability. (1) [Sections 2, 4, and 6] apply to the registration of motor vehicles and the display of license plates issued after December 31, 2003.

(2) [Sections 7, 8, and 13 through 16] apply to the registration of motor vehicles and the display of license plates issued after June 30, 2003.

(3) [Sections 3, 5, 9, 11, and 12] apply to applications for sponsorship of a generic specialty license plate submitted to the department on or after [the effective date of sections 3, 5, 9, 11, and 12].

Approved April 10, 2003

CHAPTER NO. 281

[SB 211]

AN ACT ELIMINATING THE JUNK VEHICLE DISPOSAL FEE; AMENDING SECTIONS 75-10-513 AND 75-10-532, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-513, MCA, is amended to read:

“75-10-513. Disposal of junk vehicles — fees and records. (1) When a motor vehicle wrecking facility submits a junk vehicle to the disposal program,

it shall pay a disposal fee of \$2 for each vehicle submitted, and the vehicle is then the property of the state.

(2) Quarterly, each motor vehicle wrecking facility shall mail to the department of justice, on a form approved by the department of justice, a list of all junk vehicles received by the motor vehicle wrecking facility during the quarter, stating the year, make, and complete identification number of each vehicle. If a certificate of ownership is received for a junk vehicle on the list, that certificate of ownership must accompany the list. The department of justice shall issue a receipt for the certificate of ownership if requested by the licensed facility, and the receipt may serve as an instrument for reclaiming the certificate of ownership if the vehicle is rebuilt.

(3) A motor vehicle graveyard shall submit to the department the records, documents, and other information concerning junk vehicles received by it that are required by rules of the department."

Section 2. Section 75-10-532, MCA, is amended to read:

"75-10-532. Disposition of money collected. All money received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees ~~and fees collected as motor vehicle disposal fees~~ must be remitted to the department of revenue, as provided in 15-1-504. The money must be used for the control, collection, recycling, and disposal of junk vehicles and component parts and for the removal of abandoned vehicles."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 10, 2003

CHAPTER NO. 282

[SB 292]

AN ACT EXEMPTING FROM THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977 HOUSING PROVIDED BY THE MONTANA UNIVERSITY SYSTEM AND OTHER POSTSECONDARY EDUCATION INSTITUTIONS; AND AMENDING SECTION 70-24-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-104, MCA, is amended to read:

"70-24-104. Exclusions from application of chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service, *including all housing provided by the Montana university system and other postsecondary institutions;*

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to ~~his~~ *the purchaser's* interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises; and

(8) occupancy outside a municipality under a rental agreement ~~which~~ *that* includes hunting, fishing, or agricultural privileges, along with the use of the dwelling unit.”

Approved April 10, 2003

CHAPTER NO. 283

[HB 160]

AN ACT APPROPRIATING MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT AND LITIGATION IN THE CLARK FORK RIVER BASIN; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Natural resource damage program appropriation. There is appropriated to the department of justice from the coal severance tax permanent fund a loan of up to \$650,000 as needed for the biennium ending June 30, 2005, for the purpose of conducting the natural resource damage assessment and litigation and pursuing the state of Montana’s remaining natural resource damage claims and any appeals through the natural resource damage litigation program. Any recovery in the litigation for assessment, litigation, and enforcement costs, up to the amount expended pursuant to this section, must be deposited in the coal severance tax permanent fund.

Section 2. Loan agreement. In order to make the loan authorized in [section 1], the board of investments shall enter into a contract with the department of justice, pledging the amount recovered in the litigation to the repayment of the loan to the fullest extent allowable under the law. The contract must provide that the loan repayment be deposited in the coal severance tax permanent fund. To the extent possible, the board shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term investment pool. The loan authorized in [section 1] may not be made until the contract required by this section has become effective.

Section 3. Three-fourths vote required. Because [section 1] appropriates money from the coal severance tax permanent fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

Section 4. Effective dates. (1) [Sections 2 and 3 and this section] are effective on passage and approval.

(2) [Section 1] is effective July 1, 2003.

Approved April 11, 2003

CHAPTER NO. 284

[HB 417]

AN ACT REPEALING THE SMALL POWER PRODUCTION LAWS; REPEALING SECTIONS 69-3-601, 69-3-602, 69-3-603, AND 69-3-604, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 69-3-601, 69-3-602, 69-3-603, and 69-3-604, MCA, are repealed.

Section 2. Saving clause. [This act] does not affect rights and duties that matured, contracts that were entered into, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date — notification to code commissioner. (1) [This act] is effective on the effective date of the repeal of 16 U.S.C. 824a-3.

(2) The public service commission shall, within 15 days of the effective date of the repeal of 16 U.S.C. 824a-3, notify the code commissioner, certifying that the repeal has occurred.

Section 4. Applicability. [This act] applies to a petition filed with the commission on or after [the effective date of this act].

Approved April 11, 2003

CHAPTER NO. 285

[HB 445]

AN ACT PROVIDING THAT A ROCKY MOUNTAIN DOUBLE CARRYING BALED HAY MAY NOT EXCEED 88 FEET OF COMBINED TRAILER LENGTH; AMENDING SECTION 61-10-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-124, MCA, is amended to read:

“61-10-124. Special permits — fees. (1) Except as provided in subsections (2)(b), (2)(d), and (4), in addition to the regular registration and gross vehicle weight fees, a fee of \$10 for each trip permit and a fee of \$75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), (2)(f), (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an

overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. *Except as provided in subsection (2)(g), a Rocky Mountain double may not exceed 81 feet in combined trailer length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.*

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is \$75. This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is \$125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is \$125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(g) A Rocky Mountain double carrying baled hay may not exceed 88 feet of combined trailer length.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of

vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) the combined trailer length may not exceed 95 feet;

(c) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(d) gross weight fees under 61-10-201 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(e) the combination must have a special overlength permit issued at a fee of \$200 for a term permit or \$20 for each trip permit;

(f) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(g) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is \$200.

(5) The department of transportation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a "nondivisible load" is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

(ii) destroy the value of the load or vehicle; or

(iii) require more than 8 work hours to dismantle using appropriate equipment.”

Section 2. Contingent voidness. If the department of transportation receives notice that the increase in the combined trailer length that is allowed for a Rocky Mountain double carrying baled hay will threaten federal highway funding, then [this act] is void. The department shall notify the code commissioner that the department has received a notice and the date upon which the notice was received.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 11, 2003

CHAPTER NO. 286

[HB 546]

AN ACT INCREASING FROM 2 YEARS TO 10 YEARS THE MAXIMUM INCARCERATION FOR THE OFFENSE OF FAILURE TO PROVIDE SUPPORT FOR 6 MONTHS OR FAILURE TO PROVIDE SUPPORT IN A CUMULATIVE AMOUNT EQUAL TO OR IN EXCESS OF 6 MONTHS' SUPPORT; AMENDING SECTION 45-5-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-621, MCA, is amended to read:

“45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if the person fails to provide support that the person can provide and that the person knows the person is legally obliged to provide to a spouse, child, or other dependent.

(2) (a) A person commits the offense of aggravated nonsupport if the person has:

(i) left the state without making reasonable provisions for the support of a spouse, child, or other dependent; or

(ii) been previously convicted of the offense of nonsupport.

(b) For purposes of this section, “conviction” means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure a person’s appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is inability to pay, the person’s inability must be the result of circumstances over which the person had no control. In determining ability to pay, after an allowance for the person’s minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction to enter the order, the support order is prima facie evidence of the person’s legal obligation to provide support.

(5) Payment records maintained by the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(7) (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall be fined *an amount* not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of nonsupport who has failed to provide support under a court or administrative order for 6 months or more or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined *an amount* not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed ~~2~~ 10 years, *all but 2 years of which must be suspended, with the person placed on probation for the remainder of the imprisonment term, or both.*

(c) A person convicted of aggravated nonsupport shall be fined *an amount* not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(8) Before trial with the consent of the defendant, on entry of a plea of guilty or nolo contendere, or after conviction, instead of the penalty provided in subsection (7) or in addition to that penalty, the defendant may post a bond, undertaking, or other security. This security must be for a period of ~~2 years or, in the case of aggravated nonsupport, for a period of 10 years.~~ The court shall fix the sum of the security in an amount sufficient to ensure payment of support by the defendant. After the security is posted, the court shall release the defendant on the condition that the defendant comply with any order for support. If there is no order for support, the court shall order the defendant to pay support to the spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and, if applicable, the child support guidelines adopted under 40-5-209.

(9) The bond, undertaking, or other security posted pursuant to subsection (8) is forfeited if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce a suspended sentence.

(10) As part of any prosecution under this section, the court shall also order the offender to make restitution to the spouse, the child's caretaker, or any other dependent or to the person or agency that provided support to the spouse, child, or other dependent. The amount of restitution is the sum of the arrearages payable under a support order or, if there is no support order, an amount determined reasonable by the court. The terms for payment of restitution must be determined by the court.

(11) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the offender has failed to support. A bond, undertaking, or other security forfeited under subsection (9) must be paid to the person or agency entitled to receive support from the offender.

(12) When a payment of public assistance money has been made for the benefit of a child by the department of public health and human services under the provisions of Title 53, a representative of the department may sign a

criminal complaint against the person obligated by law to support the child who received the public assistance.

(13) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The offender, if financially able, shall bear the expense of the imprisonment. The court may impose restrictions on the offender's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject an offender referred by the sentencing court."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 11, 2003

CHAPTER NO. 287

[HB 617]

AN ACT REVISING THE METAL MINE RECLAMATION LAWS; PROHIBITING AN INCREASE IN A MINE RECLAMATION BOND UNTIL A MINE OPERATING PERMIT MODIFICATION IS COMPLETE; AMENDING SECTION 82-4-337, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision. (1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Except as provided in 75-1-208(4)(b), unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the department as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) (a) *The modification of an operating permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a modification necessary to conform to the requirements of existing law as interpreted by a court of competent jurisdiction, must be processed in accordance with the procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and this section, including any environmental analysis required by Title 75, chapter 1, part 2.*

(b) *The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.*

~~(4)~~(5) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

~~(5)~~(6) Applications for major amendments must be processed in the same manner as applications for new permits.

~~(6)~~(7) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

~~(7)~~(8) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications for minor amendments and other revisions must be processed within 30 days of receipt of an application.”

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to permits and permit amendments that were approved by the department of environmental quality after September 30, 1995.

Approved April 11, 2003

CHAPTER NO. 288

[HB 678]

AN ACT ESTABLISHING A DECLARATORY RULING PROCESS UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; AUTHORIZING THE BOARD OF SUPERVISORS OF A CONSERVATION DISTRICT TO ISSUE DECLARATORY RULINGS; PROVIDING FOR JUDICIAL REVIEW OF A DECLARATORY RULING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Jurisdiction — declaratory ruling — standards — judicial review. (1) (a) The supervisors shall determine the applicability, interpretation, or implementation of any statutory provision or any rule or written consent of the supervisors under this part.

(b) The supervisors' determination pursuant to subsection (1)(a) must be made in accordance with rules established under 75-7-117, prior to the filing of a petition under subsection (2).

(2) (a) A person who may be directly affected by the applicability, interpretation, or implementation of this part and who disagrees with a determination made under subsection (1) may petition the supervisors for a declaratory ruling.

(b) If the issue raised in the petition for a declaratory ruling is of significant interest to the public, the supervisors shall provide a reasonable opportunity for interested persons and the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.

(c) If the issue raised in the petition for a declaratory ruling is not of significant interest to the public, the supervisors shall provide a reasonable opportunity for the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.

(d) Data and information may be submitted at a hearing before the supervisors. Data and information submitted to the supervisors outside of the hearing process must be made available for public review prior to the hearing being conducted before the supervisors.

(3) A proceeding held under this section is not a contested case proceeding. A declaratory ruling under this section is not subject to the provisions of the Montana Administrative Procedure Act.

(4) A declaratory ruling is subject to judicial review. Judicial review must be conducted by a court without a jury and is limited to the data, information, and arguments made before the supervisors. A court may reverse or modify the supervisors' ruling if substantial rights of the appellant have been prejudiced because the ruling is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the supervisors;
- (c) affected by error of law; or
- (d) arbitrary or capricious, characterized by abuse of discretion, or a clearly unwarranted exercise of discretion.

(5) A final judgment of a district court under this section may be appealed in the same manner as provided in 2-4-711.

(6) This section may not be interpreted or construed to allow a person to petition for a declaratory ruling under this section for an administrative review of a decision of the supervisors under 75-7-112 or 75-7-113 granting, denying, or conditioning a written consent. Review of a final action by the supervisors pursuant to 75-7-112 or 75-7-113 is exclusively provided for in 75-7-121.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 7, part 1, and the provisions of Title 75, chapter 7, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability — applicability. (1) [This act] applies retroactively, within the meaning of 1-2-109, to all notices of a project pending before a conservation district on [the effective date of this act].

(2) [Section 1] does not apply retroactively to a declaratory ruling proceeding that was initiated before [the effective date of this act].

Approved April 11, 2003

CHAPTER NO. 289

[SB 66]

AN ACT REDUCING THE YEARS OF SERVICE REQUIRED BEFORE MEMBERS OF THE PUBLIC EMPLOYEES', SHERIFFS', HIGHWAY PATROL OFFICERS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS MAY PURCHASE MILITARY SERVICE; PROVIDING THAT MEMBERS OF THE JUDGES' RETIREMENT SYSTEM MAY PURCHASE MILITARY SERVICE; PROVIDING THAT ANY VESTED MEMBER OF THE SYSTEM MAY PURCHASE THE SERVICE; AMENDING SECTIONS 19-3-503, 19-6-801, 19-7-803, 19-7-804, 19-8-901, 19-9-403, AND 19-13-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-503, MCA, is amended to read:

"19-3-503. Application to purchase military service. (1) (a) Except as provided in subsection (2) and subject to 19-3-514, a member ~~with at least 10 years of service credit with at least 5 years of membership service~~ may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

(b) To purchase this service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(2) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 2. Section 19-6-801, MCA, is amended to read:

"19-6-801. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-6-805, ~~a~~ *an eligible* member ~~with at least 15 years of service credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's

active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service:

(a) a member *with at least 15 years of service credit and* who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The member may not purchase more military service under this subsection (2)(a) than the member has service credit in excess of 15 years.

(b) a member *with at least 5 years of membership service and* who is covered by 19-6-710 shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 3. Section 19-7-803, MCA, is amended to read:

"19-7-803. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-7-805, a member with at least ~~15~~ 5 years of *membership service credit* may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

~~(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit."~~

Section 4. Section 19-7-804, MCA, is amended to read:

“19-7-804. Application to purchase additional service. (1) Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 additional year of service credit for each 5 years of membership service.

(2) To purchase service under this section, a member shall pay the actuarial cost of the service in the sheriffs' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

~~(3) Service purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803.~~

~~(4)~~(3) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.”

Section 5. Section 19-8-901, MCA, is amended to read:

“19-8-901. Application to purchase military service. (1) (a) Except as otherwise provided in this section and subject to 19-8-906, a member with at least ~~15~~ 5 years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(b) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation as determined by the board.

(2) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.”

Section 6. Section 19-9-403, MCA, is amended to read:

“19-9-403. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-9-406, a member with at least ~~15~~ 5 years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

~~(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(4)~~(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with a military retirement benefit based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.”

Section 7. Section 19-13-403, MCA, is amended to read:

“19-13-403. Application to purchase military service. (1) (a) Except as otherwise provided in this section and subject to 19-13-406, a member with at least ~~15~~ 5 years of *membership service credit* may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member’s active duty service in the armed forces of the United States for the purpose of calculating retirement benefits.

(b) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system’s most recent actuarial valuation.

~~(2) A member may not purchase more military service than the member’s years of membership service in excess of 15 years.~~

~~(3)~~(2) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

~~(4) Military service purchased under this section is not membership service and may not be used in determining the member’s eligibility for a service retirement benefit.”~~

Section 8. Application to purchase military service credit. (1) Except as otherwise provided in this section and subject to [section 9], a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member’s active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system’s most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

Section 9. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-5-409 and [section 8].

Section 10. Codification instruction. [Sections 8 and 9] are intended to be codified as an integral part of Title 19, chapter 5, part 4, and the provisions of Title 19, chapter 5, part 4, apply to [sections 8 and 9].

Section 11. Effective date. [This act] is effective July 1, 2003.

Approved April 11, 2003

CHAPTER NO. 290

[SB 77]

AN ACT EXTENDING UNIVERSAL SYSTEM BENEFITS CHARGE RATES BY 2 1/2 YEARS THROUGH DECEMBER 2005; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-402, MCA, is amended to read:

“69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. Except as provided in subsection (7), these universal system benefits charge rates must remain in effect ~~until~~ *through July 1, 2003* December 31, 2005.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income related expenditures, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) \$500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the transition advisory committee provided for in 69-8-501. A cooperative utility shall prepare and

submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and to the transition advisory committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 11, 2003

CHAPTER NO. 291

[SB 135]

AN ACT REVISING THE LAWS RELATING TO THE SCHOOL GUARANTEE ACCOUNT; PROVIDING THAT INTEREST PAYMENTS ON THE COAL SEVERANCE TAX LOAN TO PURCHASE MINERAL PRODUCTION RIGHTS MUST BE PAID MONTHLY ON THE CURRENT OUTSTANDING LOAN BALANCE; PROVIDING THAT THE TRUST LAND ADMINISTRATION ACCOUNT DOES NOT RECEIVE A PORTION OF THE MINERAL ROYALTIES PURCHASED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH THE COAL SEVERANCE TAX LOAN; AMENDING SECTIONS 20-9-622 AND 77-1-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-622, MCA, is amended to read:

“20-9-622. Guarantee account. (1) There is a guarantee account in a ~~subfund of~~ the state special revenue fund. The guarantee account is intended to:

(a) stabilize the long-term growth of the permanent fund; and

(b) maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. Except as provided in subsections (2) and (3), the guarantee account is statutorily appropriated, as provided in 17-7-502, for distribution to school districts through school equalization aid as provided in 20-9-343.

(2) As long as a portion of the coal severance tax loan authorized in section 8, Chapter 418, Laws of 2001, is outstanding, the department of natural resources and conservation shall ~~annually~~ *monthly* transfer from the guarantee account to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is *currently* outstanding ~~in the prior year~~.

(3) The revenue distributed through 20-9-534 must be used for the purposes of 20-9-533.”

Section 2. Section 77-1-109, MCA, is amended to read:

“77-1-109. Deposits of proceeds in trust land administration account. (1) The department shall, until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108; the following:

(a) mineral royalties;

(b) the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands; and

(c) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341.

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands *and other than those purchased pursuant to 17-6-340*, must be deposited in the appropriate permanent fund and the capitol building land grant trust fund. Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1). *Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.*

(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the nine permanent funds administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund.”

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 11, 2003

CHAPTER NO. 292

[SB 145]

AN ACT PROVIDING THAT A MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM MAY PURCHASE MEMBERSHIP SERVICE AND

SERVICE CREDIT FOR VERIFIABLE SERVICE AS A VOLUNTEER IN A UNITED STATES SERVICE PROGRAM; AND AMENDING SECTION 19-3-514, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purchase of federal volunteer service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase membership service and service credit for up to 5 years of the member's service as a volunteer in a United States service program, such as the peace corps, or successful completion of a term of service in a national service position as described in the National and Community Service Act of 1990, 42 U.S.C. 12501, et seq.

(2) Purchase of membership service and service credit under this section is subject to the board's verification of the member's volunteer service.

(3) To purchase this membership service and service credit, the member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

Section 2. Section 19-3-514, MCA, is amended to read:

"19-3-514. Service purchase limit — exception. (1) Except as provided in subsection (2), a member may not purchase more than a combined total of 5 years under 19-3-503, 19-3-511(3)(b), 19-3-512, ~~and~~ 19-3-513, and [section 1].

(2) A member who has purchased service *credit* under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service *credit* under 19-3-513 must receive credit for the full months of service purchased on or before January 1, 1990."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 3, part 5, and the provisions of Title 19, chapter 3, part 5, apply to [section 1].

Approved April 11, 2003

CHAPTER NO. 293

[SB 188]

AN ACT REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO INCLUDE LICENSED ELECTRICAL CONTRACTORS AND LICENSED MASTER PLUMBERS IN THE STANDARD PREVAILING WAGE SURVEY; AMENDING SECTION 18-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention

to make it the person's home. Persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Contractor" means any general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.

(6) "District" means a prevailing wage rate district established as provided in 18-2-411.

(7) "Employer" means any firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

(8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

(9) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

- (k) motor vehicle and construction equipment repair and servicing; and
- (l) appliance and office machine repair and servicing.

(10) "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

(11) (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

(12) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

(13) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed by the department based on work performed by *electrical contractors who are licensed under Title 37, chapter 68, master plumbers who are licensed under Title 37, chapter 69, part 3, and Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar character to the work performed in the district unless the annual survey of construction contractors and the biennial survey of nonconstruction service employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by the*

survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(14) "Work of a similar character" means work on private commercial projects as well as work on public projects."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 11, 2003

CHAPTER NO. 294

[SB 220]

AN ACT REVISING THE PUBLIC SERVICE COMMISSION DISTRICTS FOR THE PURPOSE OF POPULATION EQUALITY; PROVIDING FOR TRANSITION; AND AMENDING SECTION 69-1-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1-104, MCA, is amended to read:

"69-1-104. Public service commission districts. In this state there are five public service commission districts, with one commissioner elected from each district, distributed as follows:

(1) first district: Blaine, ~~Cascade~~, Chouteau, Daniels, Dawson, Fergus, Garfield, ~~Glacier~~, ~~Golden Valley~~, Hill, ~~Judith Basin~~, Liberty, McCone, ~~Musselshell~~, Petroleum, Phillips, ~~Pondera~~, ~~Prairie~~, Richland, Roosevelt, Sheridan, Toole, Valley, ~~and Wibaux~~, and ~~Wibaux~~ Counties;

(2) second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, ~~Prairie~~, Rosebud, ~~Stillwater~~, ~~Sweet Grass~~, Treasure, and Yellowstone Counties;

(3) third district: ~~Beaverhead~~, Broadwater, ~~Cascade~~, ~~Deer Lodge~~, ~~Gallatin~~, ~~Golden Valley~~, Jefferson, ~~Judith Basin~~, ~~Lewis and Clark~~, ~~Madison~~, Meagher, ~~Teton~~, ~~Musselshell~~, ~~Park~~, ~~Silver Bow~~, ~~Stillwater~~, ~~Sweet Grass~~, and Wheatland Counties;

(4) fourth district: ~~Beaverhead~~, ~~Deer Lodge~~, ~~Gallatin~~, Granite, ~~Madison~~, ~~Park~~, Lincoln, Mineral, Missoula, Powell, Ravalli, and ~~Silver Bow~~ ~~Sanders~~ Counties;

(5) fifth district: Flathead, ~~Lake~~, ~~Glacier~~, ~~Lake~~, ~~Lewis and Clark~~, ~~Lincoln~~, ~~Mineral~~, ~~Missoula~~, and ~~Sanders~~ ~~Pondera~~, and Teton Counties."

Section 2. Transition. For the purposes of the 2004 election, the secretary of state shall declare which district a sitting commissioner represents for any public service commissioner whose district is not up for election and shall use as criteria the residence of the respective commissioner on [the effective date of this act].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 11, 2003

CHAPTER NO. 295

[SB 249]

AN ACT REVISING AND CLARIFYING THE PURPOSE FOR WHICH GENERAL OBLIGATION BONDS MAY BE ISSUED FOR FINANCING AND ACQUIRING INFRASTRUCTURE IMPROVEMENTS AND EQUIPMENT FOR AEROSPACE TRANSPORTATION AND TECHNOLOGY PROJECTS; PROVIDING THAT AN AGREEMENT MAY PROVIDE THE PROJECT DEVELOPER WITH THE RIGHT OF FIRST REFUSAL FOR THE PURCHASE OF REAL PROPERTY SECURED BY THE BONDS AT FAIR MARKET VALUE PLUS REIMBURSEMENT TO THE STATE FOR ANY COSTS INCURRED IN THE ISSUANCE OF THE BONDS; AMENDING SECTION 5, CHAPTER 269, LAWS OF 1999, SECTION 1, CHAPTER 6, SPECIAL LAWS OF MAY 2000, AND SECTION 1, CHAPTER 589, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1, Chapter 589, Laws of 2001, is amended to read:

Section 1. Section 1, Chapter 6, Special Laws of May 2000, is amended to read:

Section 1. Section 5, Chapter 269, Laws of 1999, is amended to read:

Section 5. Authorization of bonds. (1) The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding \$20 million ~~for aerospace transportation and technology infrastructure development projects, as defined in 7-15-4283, except as provided in subsection (2) of this section,~~ in accordance with the terms and in the manner required by Title 17, chapter 5, part 8, ~~and upon the authority granted to the board by this section~~ *for the purpose of financing and acquiring infrastructure improvements as enumerated in 7-15-4288 and equipment for aerospace transportation and technology projects recommended by the department of commerce in accordance with the authority granted to the board by this section.* The bonds are in addition to any other authorization to the board to issue and sell general obligation bonds and subject to the conditions set forth in this section.

(2) ~~For purposes of the general obligation bonds authorized in this section, 7-15-4288(5) and (7) are excluded from the definition of aerospace transportation and technology infrastructure development projects. Bond proceeds are appropriated to the department of commerce for assisting in funding authorized aerospace transportation and technology infrastructure development projects. The department of commerce may request the board of examiners to issue the bonds for one or more specified projects for a single or~~

~~multiple entities in one or more series~~, but the total amount of bonds issued may not exceed \$20 million. *Bond proceeds are appropriated to the department, and the department is authorized to acquire or construct the infrastructure improvements or acquire the equipment, to contract with the city or county in which a project is located, to contract with a certified community lead organization, as defined in 90-1-116, or to contract with the developer of an approved project for the acquisition or construction of the infrastructure improvement or the acquisition of equipment upon a determination that it is in the best interest of the project. The plans and specifications for the infrastructure and equipment to be financed from the proceeds of the bonds must be approved by and be acceptable to the department following a review of the plans and specifications of the infrastructure by the architecture and engineering division of the department of administration, but the design and acquisition or construction of the infrastructure and the acquisition of equipment for approved projects are not, with the exception of Title 18, chapter 2, part 4, subject to the public procurement requirements contained in Title 18. The portions of aerospace transportation and technology infrastructure development projects that are Infrastructure and equipment financed with bond proceeds are owned by the state, and may be leased to the local government creating the tax increment financing district or to the entity for whom the project is created at a fair value, taking into consideration job creation and overall tax revenue generated by the project the use must be governed by a development agreement between the state and the developer of the project. The agreement may provide for the use of the infrastructure and equipment at less than fair market value, taking into consideration the number of jobs to be created by the project, the salary range of the jobs, the amount of capital contributed by the developer, and the projected tax revenue to be received by the state and local governments from the project over the term of the lease or use agreement. The agreement may provide the project developer with the right of first refusal for the purchase of real property secured by the bonds at fair market value plus reimbursement to the state for any costs incurred in the issuance of the bonds. Fair market value must be determined by a certified appraiser. For purposes of this section, state and local governments may not provide telecommunications or other services in competition with private providers unless private providers cannot provide the services.*

(3) It is the intent of the legislature that debt service payments for the bonds authorized by this section will be covered by the totality of the taxes generated by the aerospace transportation and technology ~~infrastructure~~ development projects to be calculated by an economic impact analysis of the projects on state tax revenue. *Prior to requesting the board of examiners to issue the bonds, the department of commerce shall determine that the developer of a proposed project has the financial ability to construct and implement the project based upon audited financial statements. When requesting the board of examiners to issue the bonds, the department of commerce shall present to the department of administration for presentation to the board of examiners the following:*

(a) evidence satisfactory to the board that each aerospace transportation and technology ~~infrastructure~~ development project has committed itself to locate its project in Montana ~~and has acquired a site for the project~~; and

(b) a certificate signed by the director of the office of budget and program planning that the tax revenue to be received by the state from each aerospace transportation and technology ~~infrastructure~~ development project *over the term of the bonds* will be sufficient to pay the principal amount of ~~and interest on~~ and interest on the bonds *issued to assist with the specific project.*

(4) For the purposes of this section, "equipment" means machinery used in the design, manufacture, repair, and maintenance of aerospace transportation and technology projects."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 11, 2003

CHAPTER NO. 296

[HB 6]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from the renewable resource grant and loan state special revenue account. (1) There is appropriated to the department of natural resources and conservation \$4 million from the amount that is available in the renewable resource grant and loan state special revenue account. Up to \$220,932 of this amount is to be used for emergency projects, and \$100,000 is to be used for project planning grants to be awarded by the department over the course of the biennium.

(2) The remaining funds appropriated in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (3), subject to the conditions set forth in [sections 1 through 4] and the contingencies described in the renewable resource grant and loan program January 2003 report to the 58th legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects further down the priority list that would not otherwise receive funding. For each of the grant projects listed after the city of Troy project in subsection (3), grant funds may not be received until sufficient funds are available for that purpose. Any projects that are funded by the reclamation and development grants program may not be funded under [sections 1 through 4].

(3) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM

Applicant/Project	Grant Amount
Scobey, City of	
(Wastewater System Improvements)	\$100,000
Dawson County	
(Yellowstone River Floodplain Management)	75,000*
Flathead Basin Commission	
(Ashley Creek Headwater Restoration)	99,700

Ch. 296	MONTANA SESSION LAWS 2003	1018
Missoula, City of	(Rattlesnake Neighborhood Sewer Collection System)	100,000
North Powell Conservation District	(Blackfoot River Habitat, Water Quality and Restoration)	62,600
Montana Department of Agriculture	(Monitoring Well Network for the Assessment of Ag Chemicals)	100,000
Paradise Valley Irrigation District*	(Hillside Lateral)	100,000
Ramsay County Water and Sewer District	(Water System Improvements)	100,000
Missoula County	(Mullen Road Corridor Sewer Project - Phase I)	100,000
Park County	(North Park County Water Resources Protection Plan)	75,000
Sheaver's Creek Water and Sewer District	(Water System Improvements)	100,000
Stanford, Town of	(Water System Improvements)	100,000
Hamilton, City of	(Water Distribution Improvements)	100,000
Park County-Cooke City Water District	(Water System Improvements)	100,000
Milk River Joint Board of Control*	(St. Mary Siphon Expansion Joint Replacement)	100,000
Buffalo Rapids Irrigation District	(Refit of Glendive Pumping Plant)	100,000
Mill Creek Irrigation District	(Mill Lake Dam Rehabilitation)	100,000
Montana Department of Natural Resources and Conservation	(Seepage Monitoring Project - DNRC Dams)	97,646
Sidney Water Users Irrigation District	(Increasing Irrigation Efficiency)	100,000
Stillwater County	(Yellowstone River Floodplain Management)	75,000*
Yellowstone County	(Yellowstone River Floodplain Management)	75,000*
Worden Ballantine Yellowstone County Water and Sewer District	(Water Distribution System Improvements)	100,000

1019	MONTANA SESSION LAWS 2003	Ch. 296
	Ryegate, Town of	
	(Water System Improvements)	100,000
	Malta Irrigation District*	
	(Replacement and Modification of Check Structures)	100,000
	Judith Basin County	
	(Geyser Water System Improvements)	100,000
	Sheridan, Town of	
	(Water System Improvements)	100,000
	Pablo-Lake County Water and Sewer District	
	(Wastewater Treatment System Improvements)	100,000
	Fort Belknap Irrigation District*	
	(Sugar Factory Lateral Project)	100,000
	Montana Department of Natural Resources and Conservation	
	(North Fork of the Smith River Dam Rehabilitation)	100,000
	Conrad, City of	
	(Raw Water Intake and Pump Station Improvements)	100,000
	Lewis and Clark County Water Quality Protection District	
	(Ground Water Sustainability in North Hills Area, Helena)	50,000
	Power-Teton County Water and Sewer District	
	(Water System Improvements)	100,000
	Phillips County Green Meadows Water and Sewer District	
	(Water System Improvements)	100,000
	Chinook Division Irrigation Joint Board of Control*	
	(Fresno Dam - Gate Leaf Seals)	100,000
	Upper/Lower River Road Water and Sewer District	
	(Water System Improvements)	100,000
	Gallatin Local Water Quality District	
	(Dedicated Monitoring Well Network for the Gallatin Valley)	50,000
	Troy, City of	
	(Water System Improvements)	100,000
	Montana Department of Corrections	
	(Rehabilitation of Prison Ranch Dam)	80,000
	Fort Shaw Irrigation District	
	(Water Quality and Quantity Improvement - Phase III)	89,122
	Richland County Conservation District	
	(Irrigation Potential of Ground Water)	50,000
	Pablo-Lake County Water and Sewer District	
	(Water Distribution Improvements)	100,000

Cut Bank, City of	
(Water System Improvement)	100,000
Pleasant View Homesites County Water and Sewer District	
(Water System Improvements)	100,000
Gardiner-Park County Water District	
(Water System Improvements)	100,000

(4) The department of natural resources and conservation may determine the dollar portions for each project identified with an asterisk (*).

(5) For grant projects for which the department of natural resources and conservation also has recommended a loan, the authorization for the loan is contained in House Bill No. 8.

(6) The funding provided to the projects approved in this section and identified with an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding required for the settlement of the Fort Belknap/Montana Water Right Compact.

(7) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2005 biennium pursuant to 17-7-302.

Section 2. Condition of grants. Disbursement of funds under [sections 1 through 4] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Changes in the project scope of work or budget that reduce the public or natural resource benefits as presented in department reports and applicant testimony to the 58th legislature will result in the proportional reduction in grant amount.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project recommendations and biennium report submitted to the 58th legislature for the 2005 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved grant authority;

(4) execution of a grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

Section 3. Conditions for grants. Notwithstanding the conditions described in [section 2], grant funds are disbursed in the order of priority listed in [section 1] as resource indemnity trust account interest income revenue is received. A project approved by [section 1] is not entitled to receive grant funds that are not collected and allocated to the renewable resource grant and loan program state special revenue account.

Section 4. Appropriations established. (1) For any entity of state government that receives a grant under [sections 1 through 3], an appropriation is established for the amount of the grant listed in [section 1(3)]. Grants to state entities from prior biennia are reauthorized for completion of contract work.

(2) Any funds in excess of the amount appropriated for grants under [sections 1 through 3] are available for appropriation for authorized purposes from the renewable resource grant and loan state special revenue account.

Section 5. Review of previously authorized grants. Recipients of renewable resource grants authorized by previous legislatures that have not completed startup conditions must be notified by the department of natural resources and conservation that the legislature, at the next regular session, will review renewable resource grants to determine if the commitment of the renewable resource grant should be withdrawn.

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 8. Effective dates. (1) [Sections 2 through 7 and this section] are effective on passage and approval.

(2) [Section 1] is effective July 1, 2003.

Approved April 14, 2003

CHAPTER NO. 297

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 57TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Approval of renewable resource projects and authorization to provide loans. (1) The legislature finds that the renewable resource projects listed in this section meet the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed below in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) GROUP A: The interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
BUFFALO RAPIDS IRRIGATION DISTRICT	
Refit of Glendive Pumping Plant	\$1,315,000

MILL CREEK IRRIGATION DISTRICT

Mill Lake Dam Rehabilitation 572,000

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

North Fork of the Smith River
Dam Rehabilitation 557,000

HILL COUNTY

Beaver Creek Dam Outlet Works Repair 500,000

Section 2. Projects not completing requirements — projects reauthorized. (1) The legislature finds that the following renewable resource projects that were approved by the 57th legislature in Chapter 266, Laws of 2001, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2003. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed below in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) GROUP A: The interest rate for the projects in this group may be 2% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

Loan Amount

LOCKWOOD WATER AND SEWER DISTRICT

Wastewater Collection and Treatment Works \$3,300,000

(3) GROUP B: The interest rate for the project in this group is 2.25% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan Amount

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Nevada Creek Dam Rehabilitation \$494,041

(4) GROUP C: The interest rate for the projects in this group will be 4.5% on the first \$250,000, 2.25% on the next increment of the loan up to \$500,000, and 0% on the amount of the loan over \$500,000. The department of natural resources and conservation will then determine an average rate for the full term of the loan, which may be up to 20 years.

Loan Amount

LOWER WILLOW CREEK DRAINAGE DISTRICT

Lower Willow Creek Dam Rehabilitation \$1,350,000

MALTA IRRIGATION DISTRICT

Repair and Modification of Dodson Diversion Dam 2,274,950

(5) GROUP D: The interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan Amount

CANYON CREEK IRRIGATION DISTRICT

Canyon Lake Dam and Wyant Lake Dam Restoration Project \$300,000

Section 3. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 7]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed \$11,729,290, of which \$10,662,991 is to be used to finance the projects approved in [sections 1 and 2] and up to \$1,066,299 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the renewable resource grant and loan state special revenue account.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 4. Condition of loans. (1) Disbursement of funds under [sections 1 through 7] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report for the biennium;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 5. Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

Section 6. Appropriation established. For any entity of state government that receives a loan under [sections 1 through 7], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 7. Creation of state debt — appropriation of coal severance tax — bonding provisions. (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

(2) The legislature, through the enactment of [sections 1 through 7] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2003.

Approved April 14, 2003

CHAPTER NO. 298

[HB 124]

AN ACT CREATING A SPECIAL REVENUE ACCOUNT TO BE USED BY THE DEPARTMENT OF JUSTICE ON BEHALF OF THE MONTANA LAW ENFORCEMENT ACADEMY; PROVIDING FOR A SURCHARGE UPON CERTAIN CRIMINAL CONVICTIONS TO FUND LAW ENFORCEMENT ACADEMY OPERATIONS; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Department of justice account established. (1) There is an account in the state special revenue fund to be used by the department of justice on behalf of the Montana law enforcement academy, established in 44-10-103.

(2) Money in the account created in subsection (1) must be appropriated by the legislature for the purposes provided in Title 44, chapter 10, part 2, including use as matching funds for grants to be sought under 44-10-202(10).

Section 2. Surcharges upon certain criminal convictions — exception. (1) Except as provided in subsection (2), all courts of limited

jurisdiction, except small claims courts, shall impose a \$10 surcharge on a defendant who is convicted of criminal conduct under state statute or who forfeits bond.

(2) A court may not waive payment of the surcharge unless the court determines that the defendant is unable to pay the surcharge. Inability to pay must be supported by a sworn statement from the defendant demonstrating financial inability to pay without substantial hardship in providing for personal or family necessities. The statement is not admissible in the proceeding unless offered for impeachment purposes and is not admissible in a subsequent prosecution for perjury or false swearing.

(3) The surcharge imposed by this section is not a fee or a fine and must be imposed in addition to other taxable court costs, fees, or fines. The surcharge may not be used in determining the jurisdiction of any court.

(4) The amounts collected under this section must be forwarded to the department of revenue for deposit in the account created in [section 1].

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 44, chapter 10, part 2, and the provisions of Title 44, chapter 10, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 3, chapter 1, part 3, and the provisions of Title 3, chapter 1, part 3, apply to [section 2].

Section 4. Effective date — applicability. (1) [This act] is effective July 1, 2003.

(2) [Section 2] applies to:

- (a) a defendant convicted on or after July 1, 2003; and
- (b) proceedings filed on or after July 1, 2003.

Approved April 14, 2003

CHAPTER NO. 299

[HB 186]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE LICENSING AND REGULATION OF MOTOR VEHICLE DEALERS; AUTHORIZING WITHDRAWAL OF DEALER AND DEMONSTRATOR PLATES AND 20-DAY PERMITS IN CERTAIN CONDITIONS; REQUIRING DEALERS TO PAY OFF OUTSTANDING BALANCES ON TRADE-IN OR CONSIGNED VEHICLES WITHIN A CERTAIN PERIOD; REQUIRING A SECURED PARTY WHO HAS BEEN PAID IN FULL TO DELIVER A RELEASE WITHIN A CERTAIN PERIOD; REMOVING THE REQUIREMENT THAT A DEALER LICENSE BE LIMITED TO A 1-YEAR TERM AND ALLOWING THE LICENSE TO REMAIN VALID UNTIL SUSPENDED, REVOKED, OR CANCELED UPON SURRENDER; INCREASING BOND REQUIREMENTS FOR NEW AND USED MOTOR VEHICLE DEALERS, RECREATIONAL VEHICLE DEALERS, TRAILER DEALERS, WHOLESALERS, AND AUTO AUCTIONS TO \$50,000 AND FOR MOTORCYCLE DEALERS TO \$15,000; REVISING THE REPORTING REQUIREMENTS CONCERNING DEALER PLATES; CLARIFYING THE GRACE PERIOD FOR DEALER AND DEMONSTRATOR PLATE USAGE; REVISING DEALER RECORDKEEPING REQUIREMENTS; REVISING

THE PERIOD OF SUSPENSION OF A DEALER LICENSE; LIMITING THE EXEMPTION FROM REGISTRATION LAWS AND SPECIAL TRANSFER PRIVILEGES FOR DEALERS WHO FAIL TO FILE AN ANNUAL REPORT AND PAY ANNUAL FILING AND REGISTRATION FEES BEFORE CERTAIN DATES; ALLOWING A LICENSED AUTO AUCTION TO USE AUTO AUCTION LICENSE PLATES TO TRANSPORT VEHICLES BOTH TO AND FROM AUCTION TO A POINT OF STORAGE OR DELIVERY IN THIS STATE; CLARIFYING THE REQUIREMENT FOR DEALERS TO CARRY AND MAINTAIN GENERAL LIABILITY INSURANCE; REQUIRING INSURANCE CARRIERS TO NOTIFY THE DEPARTMENT OF JUSTICE UPON CANCELLATION OR TERMINATION OF A DEALER'S GENERAL LIABILITY INSURANCE POLICY; REPLACING THE ANNUAL LICENSE RENEWAL REQUIREMENT WITH THE REQUIREMENT TO FILE AN ANNUAL REPORT AND PAY CERTAIN FEES; REQUIRING CERTAIN USED MOTOR VEHICLE DEALERS TO CERTIFY TO THE RETAIL SALE OF AT LEAST 12 VEHICLES IN THE PRIOR YEAR OR PAY AN ADDITIONAL REGISTRATION FEE OF \$25; PROHIBITING THE DEPARTMENT OF JUSTICE FROM RENEWING DEALER OR DEMONSTRATOR PLATES FOR A DEALER WHO HAS NOT FILED AN ANNUAL REPORT OR PAID REQUIRED FEES BY A CERTAIN DATE; PROHIBITING THE DEPARTMENT OF JUSTICE FROM TRANSFERRING TITLE TO A DEALER WITHOUT REGISTERING THE VEHICLE WHEN THE DEALER HAS NOT FILED AN ANNUAL REPORT OR PAID REQUIRED FEES BY A CERTAIN DATE; REQUIRING THE DEPARTMENT OF JUSTICE TO INITIATE ADMINISTRATIVE ACTION TO REVOKE A DEALER'S LICENSE WHEN THE DEALER FAILS TO FILE AN ANNUAL REPORT AND PAY FEES BY A CERTAIN DATE; INCREASING THE DEALER AND WHOLESALER DEMONSTRATOR PLATE FEE TO \$5; CLARIFYING REQUIREMENTS FOR USE OF DEMONSTRATOR PLATES; REVISING REQUIREMENTS FOR THE CONTESTED CASE HEARING PROCESS TO CANCEL OR TERMINATE A MOTOR VEHICLE FRANCHISE; INCREASING THE FEE FOR TRANSIT PLATES TO \$10 AND LIMITING THE NUMBER OF SETS OF TRANSIT PLATES THAT MAY BE ISSUED TO A TRANSPORTER OF NEW MOTOR VEHICLES, UNLESS NEED FOR ADDITIONAL PLATES IS DEMONSTRATED; AMENDING SECTIONS 61-4-101, 61-4-102, 61-4-104, 61-4-105, 61-4-107, 61-4-111, 61-4-120, 61-4-123, 61-4-124, 61-4-125, 61-4-129, 61-4-206, AND 61-4-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Privileges incident to license — withdrawal upon certain conditions. (1) The privileges of a dealer licensed under the provisions of this part to use and display a set of dealer plates or a demonstrator plate on a motor vehicle held for sale by the dealer and to issue a 20-day permit, under the authority of 61-4-111 or 61-4-112, upon the sale of a vehicle by the dealer are specifically conditioned on the dealer's satisfaction of the bond requirements of 61-4-101(7) and the general liability insurance coverage requirements of 61-4-123, without interruption or lapse.

(2) If the department is notified or determines that a dealer's bond or general liability insurance has lapsed or been canceled, all dealer plates, demonstrator plates, and 20-day permits assigned or issued to the dealer are subject to immediate withdrawal and confiscation, upon demand, by the department or a

compliance specialist, upon behalf of the department, and may not be returned to the dealer until the bond and general liability insurance requirements have been satisfied.

(3) A dealer whose privileges are withdrawn under this section may otherwise engage in the dealer's business operations during the period of withdrawal.

(4) If the lapse of bond or general liability insurance is not corrected with 30 days, the department may initiate administrative action to suspend or revoke the dealer's license under 61-4-105(2).

Section 2. Obligation of dealer to pay off liens on motor vehicles accepted in trade or consignment — duties of dealer and secured party.

(1) (a) If a dealer accepts a vehicle in trade from a retail customer as part of the sale of another vehicle and there is an outstanding loan balance owing on the traded vehicle, the dealer shall remit payment to the secured party to whom the balance on the traded vehicle is owed in an amount sufficient to satisfy the perfected security interest on the traded vehicle by the earlier of the following dates:

(i) 21 days from the date of acceptance of the vehicle in trade; or

(ii) 15 days from the date of the receipt by the dealer of payment in full from the sale of the traded vehicle.

(b) If a dealer accepts a vehicle from an owner for sale upon consignment and there is an outstanding loan balance owing on the consigned vehicle, the dealer shall remit payment to the secured party to whom the balance on the consigned vehicle is owed in an amount sufficient to satisfy the perfected security interest on the consigned vehicle within 15 days from the date of the receipt by the dealer of payment in full for sale of the consigned vehicle.

(2) A secured party who has been paid in full by a dealer in accordance with the terms of this section shall forward to the department a properly executed release within:

(a) 15 business days after the business day on which the funds are received when the funds are in cash, cashier's check, certified check, teller's check, or other certified source of funds;

(b) 18 business days after the business day on which the funds are received when the funds are in the form of a check drawn on a local originating depository institution; or

(c) 21 business days after the business day on which the funds are received when the funds are in the form of a check drawn on a nonlocal originating depository institution.

(3) For purposes of this section, "business day" means a weekday, excluding any weekday upon which a legal holiday falls.

Section 3. Section 61-4-101, MCA, is amended to read:

"61-4-101. Dealer's license — types of licenses and terms — plates — bonds — zoning. (1) Except as provided in 61-4-125, a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a new motor vehicle or used motor vehicle, new or used recreational vehicle, trailer (except a trailer having an unloaded weight of less than 500 pounds), motorcycle, quadricycle, or special mobile equipment that is

not registered in the person's name, unless the person is the holder of a dealer's license issued by the department under this part.

(2) (a) The department is authorized to issue a dealer's license for one or more specified vehicle types to any person ~~whom~~ it determines is qualified to hold a license under the provisions of this section. A dealer's license may be issued for, and restricted to, one or more of the following vehicle types:

- (i) new motor vehicle;
- (ii) used motor vehicle;
- (iii) new recreational vehicle;
- (iv) used recreational vehicle;
- (v) trailer or special mobile equipment; or
- (vi) motorcycle or quadricycle.

(b) ~~For each type of dealer's license authorized, the~~ The department shall design and issue dealer and demonstrator plates as provided in 61-4-102 and 61-4-129.

(c) With the exception of a licensed new motor vehicle dealer, a dealer licensed for a particular type of vehicle may sell, trade, or accept on consignment only vehicles of the type for which the license is authorized, unless the dealer's license specifically refers to more than one vehicle type, such as a motorcycle or quadricycle license. A new motor vehicle dealer is authorized to sell, trade, or accept on consignment new motor vehicles or used motor vehicles.

~~(d) Regardless of vehicle type, a dealer's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.~~

(d) *Subject to the provisions of 61-4-124, a dealer's license issued by the department is valid until:*

- (i) voluntarily returned to the department for surrender and cancellation upon the cessation of the dealer's business operations; or*
- (ii) suspended or revoked for a violation of this chapter or any other laws relating to the sale of motor vehicles.*

(3) (a) An applicant for a dealer's license shall submit a written application for a dealer's license to the department, specifying the type or types of dealer's license sought. The application must be signed by the applicant and contain a verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the license application process is subject to independent verification by the department or an authorized representative of the department.

(b) After examining a license application and conducting an investigation necessary to verify the information contained in the application and if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

- (i) poses a threat to the effective regulation of dealers, wholesalers, or auto auctions;
- (ii) poses a threat to the public interest of the state; or

(iii) creates a danger of illegal or deceptive practices being used in the conduct of the proposed dealership, wholesaler, or auto auction.

(4) To be qualified for licensure as a dealer, an applicant shall provide to the department the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (4)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (4)(a), information concerning whether the person has:

(i) an ownership interest in a vehicle dealership or a wholesaler business in Montana or another jurisdiction and, if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and, if so, shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any court proceedings pertaining to the conduct and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired ~~garage~~ general liability insurance, naming the department as a certificate holder of the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing dealer or demonstrator license plates that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business and must be for a minimum of 1 year;

(d) the geographic location of the physical lot or lots upon which vehicles will be displayed for sale and of a permanent nonresidential building that will be maintained to store the actual physical or electronic records resulting from the purchase, sale, trade, or consignment of vehicles for which licensure is sought. An applicant may use more than one location to display vehicles for sale if the maximum distance between each display lot does not exceed 200 feet and if the distance between a display lot and the building in which vehicle sales records are stored does not exceed 1,000 feet.

(e) for each geographic location specified in the application, evidence of the applicant's compliance with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of compliance may be documented by means of a written verification of compliance signed by the authorized representative of the local land use planning or zoning board or the local business permitting agency.

(f) a diagram or plat showing the geographic location, lot dimensions, and building and sign placement for the applicant's proposed established place of business, along with two or more photographs of the geographic location, building premises, and sign, as prescribed by the department;

(g) a certification by the applicant that the applicant is a bona fide dealer in new motor vehicles, used motor vehicles, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile equipment;

(h) if the applicant is seeking a new motor vehicle dealer's license:

(i) the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement and the name and make of all motor vehicles to be handled by the applicant;

(ii) the geographic location or locations, specified in writing, upon which the applicant will provide and maintain a permanent building to display and sell new motor vehicles and offer and maintain a bona fide service department for the repair, service, and maintenance of the motor vehicles; and

(iii) verification that the applicant otherwise meets the requirements of part 2 of this chapter; and

(i) if the applicant is applying for a new recreational vehicle dealer's license, certification that the person is recognized by a manufacturer, importer, or distributor as a dealer in new recreational vehicles.

(5) If an applicant for a new motor vehicle or used motor vehicle, new or used recreational vehicle, or trailer dealer's license wants to maintain more than one established place of business, the applicant shall file a separate license application for each proposed place of business and otherwise qualify for licensure at each place separately.

(6) Each application under this section must be accompanied by an application fee of \$5 and one or more of the following license fees based on the type of dealer's license being sought:

- (a) \$25 for a new motor vehicle dealer's license;
- (b) \$25 for a used motor vehicle dealer's license;
- (c) \$25 for a new or used recreational vehicle dealer's license; or
- (d) \$25 for a motorcycle or trailer dealer's license.

(7) The applicant for a dealer's license shall also file with the application a bond of ~~\$35,000~~ \$50,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a new or used recreational vehicle dealer, or a trailer dealer. Applicants for a motorcycle dealer's license shall file a bond in the sum of ~~\$10,000~~ \$15,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same geographic location if all types of licenses are indicated on the face of the bond. All bonds must be approved by the department, must be filed in its office, and must be renewed annually."

Section 4. Section 61-4-102, MCA, is amended to read:

"61-4-102. Dealer's license numbers — assignment, numbering, and limitation of dealer plates — restriction of use — fees. (1) Upon the licensing of a dealer, the department shall assign to the dealer a distinctive serial license number as a dealer and furnish the dealer with one or more sets of numbered dealer plates in accordance with the provisions of this section.

(2) (a) Dealer plates designed by the department must be similar to the numbered plates furnished to owners of motor vehicles under 61-3-332, but they must bear:

- (i) the license number assigned to the dealer;

(ii) an abbreviation for the vehicle type of the dealer's license issued, as follows:

- (A) the letter "D" for a new motor vehicle dealer;
 - (B) the letters "UD" for a used motor vehicle dealer; or
 - (C) the letters "RV" for a new or used recreational vehicle dealer; and
- (iii) the actual number of sets of dealer plates issued to the dealer.

(b) Dealer plates may not be issued to a motorcycle or trailer dealer or a wholesaler.

(3) Dealer plates must contain the prefix of the county in which the dealer's established place of business is located, followed by the dealer's license type abbreviation, the dealer's license number, and the number of sets of dealer plates issued to that dealer. For example, new motor vehicle dealer number 4 in Lewis and Clark County would be numbered 5D-4, and if the dealer were issued three sets of dealer plates, they would be numbered consecutively as follows, 5D-4-1, 5D-4-2, and 5D-4-3.

(4) (a) In addition to the fees required under the provisions of 61-4-101 and 61-4-124, an applicant for a dealer's license shall pay an annual fee of \$25; for each set of numbered dealer plates requested and issued.

(b) The number of dealer plates that may be issued to a dealer must be determined as follows:

(i) a dealer is entitled to one set of dealer plates upon the issuance of an original license or a renewed license;

(ii) an applicant qualified for a license renewal is entitled to additional sets of numbered plates based on the following formula:

- (A) 5% of the first 100 vehicle sales for the previous year; plus
- (B) 3% of the next 100 vehicle sales for the previous year; plus
- (C) 2% of vehicle sales in excess of 200 for the previous year; and

(iii) a dealer is entitled to additional sets of dealer plates during a license term as the dealer's sales incrementally meet or exceed the requirements of the formula established in subsection (4)(b)(ii). However, the aggregate number of sets of dealer plates issued to a dealer under this subsection (4)(b)(iii) may not exceed the combined number allowed under subsections (4)(b)(i) and (4)(b)(ii).

(5) (a) A dealer is authorized to use and display dealer plates on a motor vehicle held for bona fide sale by the dealer and that is operated by or under the control of the dealer, the dealer's spouse, officers, or employees.

(b) For purposes of this subsection (5):

(i) the term "officers" includes only the persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and the term "employees" means persons upon whom the dealer has paid social security taxes as a full-time employee; and

(ii) the display of a Monroney label or a buyer's guide label, as required by 61-4-123(2), on a vehicle bearing dealer plates is prima facie evidence that the vehicle is offered for bona fide sale by the dealer.

(6) Dealer plates may not be used or displayed on vehicles used for hire, lease, or rental.

(7) (a) A dealer is accountable for each set of numbered dealer plates issued and, *except as provided in subsection (7)(b)*, shall file ~~a quarterly~~ *an annual* report with the department certifying the disposition of each set of dealer plates assigned to the dealer and specifying the name, address, and occupation of the person primarily using each set of plates.

~~(b) A dealer who fails to submit an accountability report within 30 days of the end of the calendar quarter may be subject to the imposition of a civil penalty under 61-4-105.~~

(b) Upon reassignment of one or more sets of dealer plates to another person, within 15 days of the reassignment, the dealer shall notify the department, in a manner prescribed by the department, of the name, address, and occupation of the person to whom the plates were assigned.

(8) (a) All numbered dealer plates expire on December 31 of the year of issue and ~~are subject to renewal in accordance with the provisions of 61-4-124 and this section must be renewed annually.~~

(b) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use dealer plates assigned and registered for the prior calendar year through the last day of February of the following year, as provided in 61-4-124(5)."

Section 5. Section 61-4-104, MCA, is amended to read:

"61-4-104. Record of purchase or sale. (1) (a) A dealer or wholesaler licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the *date of purchase, sale, or consignment and the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be:*

(i) the person from whom the dealer or wholesaler acquired the vehicle's ownership or, if consigned, possessory interest in the vehicle;

(ii) the person to whom the dealer or wholesaler assigned the vehicle; and

(iii) a secured party with a perfected security interest in the vehicle to which the dealer or wholesaler's interest is subordinate, if any.

(b) The vehicle description in the case of motor vehicles must also include the vehicle identification number and engine number, if any, and must include a statement that a number has been obliterated, defaced, or changed if that has occurred. In the case of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear on the trailer, semitrailer, or special mobile equipment.

(2) The dealer or wholesaler must also have a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler from the time the motor vehicle is delivered to the dealer or wholesaler until it has been disposed of by the dealer or wholesaler. It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign the certificate of ownership or manufacturer's certificate of origin for vehicles sold.

(3) All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4),

must be physically located and maintained within the building referred to in 61-4-101. An authorized representative of the department, upon presentation of the representative's credentials, may inspect and have access to and copy any records required under this chapter."

Section 6. Section 61-4-105, MCA, is amended to read:

"61-4-105. Criminal penalty — civil penalty imposed by agency. (1) Except as provided in 61-4-143, a person violating the provisions of this part is guilty of a misdemeanor and subject to a fine in an amount of not less than \$250 and not more than \$500. For the purposes of this section, every sale of a motor vehicle in violation of the provisions of this part is a separate offense.

(2) In addition to all other penalties created by this part, the department is authorized to take appropriate enforcement action on its own initiative. Except as provided in 61-4-143, a person violating the provisions of this part may be subject to administrative action, in accordance with the contested case procedures of Title 2, chapter 4, as follows:

- (a) a civil penalty not to exceed \$1,000 for each violation;
- (b) suspension of the motor vehicle dealer, wholesaler, or auto auction license not to exceed ~~5-working~~ 7 days;
- (c) revocation ~~or denial~~ of the motor vehicle dealer, wholesaler, or auto auction license; or
- (d) any combination of subsections (2)(a) through (2)(c)."

Section 7. Section 61-4-107, MCA, is amended to read:

"61-4-107. Cease and desist order. (1) When the department has reasonable cause to believe, from information furnished to it or from an investigation made by it, that a person is engaged in any business regulated by this part without being licensed as required *or if a dealer licensed under this part is conducting an off-premises sale without a permit, as required by 61-4-123(4)*, it shall immediately issue and serve upon the person, *in person or by certified mail*, a cease and desist order requiring the person to cease and desist from further engaging in that business *or from conducting an off-premises sale without a permit*. If the person fails to comply with the order, the department shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court shall proceed in the action as in other actions for injunctions.

~~(2) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the certificates of ownership are not held in the offeror's name, in any calendar year is prima facie evidence that the offeror is engaged in the business of dealing motor vehicles and must be licensed under this chapter.~~

~~(3)~~(2) When the department has reasonable cause to believe, from an investigation made by it or information furnished to it by a law enforcement officer, that a dealer or wholesaler has been improperly licensed, has used a dealer's license in a manner other than as authorized in this title, has provided a material misstatement of fact in an application for a license, is not qualified as a dealer or wholesaler under the requirements of this title, or has engaged in criminal conduct that renders the dealer or wholesaler unfit for licensure, the department may revoke the dealer's or wholesaler's license."

Section 8. Section 61-4-111, MCA, is amended to read:

“61-4-111. Used motor vehicles — transfer to and from dealers. (1) *Except as provided in 61-4-124(6),* a licensed dealer, broker, or wholesaler who intends to resell a used motor vehicle and who operates the vehicle only for demonstration purposes:

(a) is exempt from registration under 61-3-201(2) when applying for a certificate of ownership; and

(b) may transfer or receive ownership of a motor vehicle by use of a dealer reassignment section on a certificate of ownership; however, when the allotted number of dealer reassignment sections on a certificate of ownership has been completed, ownership of the vehicle may not be transferred until an application for a certificate of ownership has been submitted by the dealer to the department and a new certificate of ownership has been issued.

(2) Upon the transfer of a used motor vehicle to a person other than a licensed dealer, broker, or wholesaler, the following acts are required of the dealer on or before the times set forth in this subsection:

(a) Prior to delivery of the vehicle to the purchaser, the dealer shall issue and affix to the rear window of the vehicle a 20-day permit in a form to be prescribed by the department and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number. There must be imprinted on the permit in bold letters the following statement: “IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER”. One copy of the permit must be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2)(b), and a copy must be retained by the dealer for the dealer’s file. It is unlawful for the dealer to issue more than one permit per vehicle sale.

(b) Within 4 working days following the date of delivery of the vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides the certificate of ownership and certificate of registration (if the certificates are then in the dealer’s possession), with an application for registration executed by the new owner in accordance with the provisions of 61-3-322, and a copy of the permit affixed to the vehicle by the dealer. The department, upon receipt of the documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration, together with a statement of any conditional sales contract, mortgage, or other lien as provided in 61-3-202. Transmission of the documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first-class mail, in which event they are considered to have been delivered at the time of mailing.

(c) If the dealer is unable to forward the certificate of ownership or certificate of registration within the time set forth in subsection (2)(b) because the certificate is lost, is in the possession of third parties, or is in the process of reissuance in this state or elsewhere, the dealer shall comply in all other respects with the provisions of subsection (2)(b) and shall forward the missing document or documents to the county treasurer, either personally or by first-class mail, within 3 days after receipt.

(3) Upon compliance by the dealer with the requirements in this section, title to the motor vehicle is considered to have passed to the purchaser as of the date of the delivery of the vehicle to the purchaser by the dealer, and the dealer has no further liability or responsibility with respect to the processing of registration.

(4) For purposes of this section, "motor vehicle" includes a trailer as defined in 61-1-111."

Section 9. Section 61-4-120, MCA, is amended to read:

"61-4-120. Application for auto auction license — general regulations. (1) A person, firm, association, or corporation that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises, including street address, city, county, and state, where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of ~~\$35,000~~ \$50,000 and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is \$500 and for subsequent renewal applications is \$100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in

a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, the date of sale, the name, address, license number, and authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of \$10 from the auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than \$10 for the issuance of each permit to offset the cost of the permit. It is unlawful for the auto auction to issue more than one temporary permit per vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles *to and from* a point of storage or a point of delivery in this state *and to and from* the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

- (i) the vehicle identification number and engine number, if any; and
- (ii) a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ownership at a location on the front or back of the certificate, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

(i) name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number;

(ii) name, address, and signature of the transferor;

(iii) name, license number, and signature of the transferee; and

(iv) date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ownership and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer database or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgment for the buyer under the provisions of 61-3-206."

Section 10. Section 61-4-123, MCA, is amended to read:

"61-4-123. Dealer requirements and restrictions. (1) A dealer may not offer for sale, trade, or consignment any vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a vehicle of a type for which the dealer is not licensed.

(2) A dealer may not display at the dealer's established place of business or any approved off-premises sale location a vehicle offered for sale, trade, or consignment unless the Monroney label required for new motor vehicles pursuant to 15 U.S.C. 1232 or the buyer's guide label required for used motor vehicles pursuant to 16 CFR, part 455, is affixed to the side window of the vehicle or is conspicuously displayed within the vehicle in a fashion that is readily readable by a customer.

(3) Except as provided in subsection (4), a dealer may not sell or display a motor vehicle offered for sale at any geographic location other than that of the dealer's established place of business as listed on the dealer's license.

(4) (a) A dealer may conduct an off-premises display and sale at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises display and sale and obtains a permit from the department. The department may require proof from the dealer that the location proposed for the

off-premises display and sale is in compliance with local zoning ordinances. Except for recreational vehicle dealers, an off-premises display and sale must be conducted within the county of the dealer's licensed location. The display and sale may not exceed 10 consecutive days, and a licensed dealer may not conduct more than 10 off-premises displays and sales during any 1 calendar year.

(b) A dealer may display one or more vehicles inside an airport terminal or shopping mall without obtaining an off-premises display and sale permit if no actual sales are made, or could be made, at the terminal or mall.

(c) Upon prior written notice to the department, a dealer may display one vehicle at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if no actual sales are made, or could be made, at the display location and the display:

(i) conspicuously promotes or supports an event or a program sponsored by a nonprofit corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes and the vehicle is displayed at a location where the event is being held or the program is being promoted; or

(ii) conspicuously promotes a joint commercial endeavor between the dealer and another clearly identified business entity and the vehicle is displayed on premises owned or leased by the other business entity and where the other entity regularly conducts its business. A display under this subsection (4)(c)(ii) may not exceed 90 days.

(5) If more than one dealer displays vehicles and maintains an established place of business at the same geographic location, each dealer shall ensure that all vehicle records, office facilities, and inventory, if applicable, are physically segregated from those of the other dealer and clearly identified and attributed to the appropriate dealer.

(6) A dealer shall install and maintain telephone service at the dealer's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located.

(7) A dealer shall conspicuously post at the dealer's established place of business written notice indicating the regular and customary office hours maintained by the dealer.

(8) *(a) A dealer shall carry and continuously maintain a general liability insurance policy that covers any vehicle bearing a set of dealer plates or a demonstrator plate that is offered for demonstration or loan to, or otherwise may be operated by, a customer in the regular course of the dealer's business operations.*

~~(a)(b) It is the responsibility of the~~ A dealer ~~to~~ must ensure that the department is named as a certificate holder on any ~~garage~~ general liability insurance policy held by the dealer, that the minimum term of the policy is 1 year, and that a lapse of insurance does not occur as a result of cancellation or termination of a previously certified policy.

~~(b)(c)~~ This subsection (8) does not relieve a dealer of the mandatory vehicle liability insurance obligation imposed under chapter 6 of this title.

(9) A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that vehicles are offered for sale, trade, or consignment. The letters of the sign must be at least 6

inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.”

Section 11. Section 61-4-124, MCA, is amended to read:

“61-4-124. License renewal — fee — dealer’s license suspension Annual report — filing and registration fees — grace period for dealer and demonstrator plates — restrictions imposed upon failure to file. (1) On or before December 31 of each year, a dealer shall apply to the department for renewal of the dealer’s license for an additional 1 year period.

~~(2) (a) To qualify for renewal, a dealer shall submit a completed application, in a form prescribed by the department, updating prior submitted information submit an annual report, in a form or manner prescribed by the department, to the department to advise the department of any changes concerning owner identity, other ownership interest interests, felony conduct, garage general liability insurance status, and surety bond filings, as originally required under 61-4-101, that may have occurred in that calendar year and providing to provide any other relevant information requested by the department.~~

~~(b)(2) (a) The department may also require a renewal applicant dealer to submit one or more current photographs of the dealer’s established place of business or the signage for the business with the dealer’s annual report.~~

~~(e)(b) If a dealer seeks to change the geographic location of the dealer’s established place of business, the dealer shall also provide information concerning local land use planning, zoning, and business permitting compliance, if applicable, and a diagram or plat for the proposed location, consistent with the requirements of 61-4-101.~~

(3) Except as provided in subsection (4)(c), ~~a license renewal application the annual report~~ must be accompanied by a \$5 ~~application filing~~ fee and one or more of the following ~~license dealer registration~~ fees, ~~depending based on the type of license renewal being sought held by the dealer:~~

(a) \$25 for a new motor vehicle, used motor vehicle, new recreational vehicle, or used recreational vehicle dealer’s license; and

(b) \$25 for a motorcycle or trailer dealer’s license.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a used motor vehicle dealer ~~seeking license renewal~~ shall also certify, under penalty of law, to the retail sale of 12 or more used motor vehicles during the ~~expiring license term calendar year for which the annual report is filed~~. A used motor vehicle dealer licensed for less than a full calendar year in the ~~expiring license term year for which the report is filed~~ shall certify, under penalty of law, to the retail sale of an average of at least one used motor vehicle ~~a for each calendar month or portion of a calendar month, for which that the expiring license was in effect.~~

(b) The minimum retail sales requirements of this subsection (4) do not apply to a dealer ~~seeking to renew filing an annual report~~ for a used motor vehicle dealer’s license and either a new motor vehicle dealer’s license or a new recreational vehicle dealer’s license.

(c) (i) A used motor vehicle dealer who cannot certify, under penalty of law, to the number of retail sales required under subsection (4)(a) in a calendar year for which the report is filed must pay a fee of \$25 in addition to the filing and registration fees required in subsection (3).

~~(i)(ii) To qualify for renewal, a~~ A used motor vehicle dealer who is also a qualified tow truck operator, as defined in 61-8-903, ~~shall and who, in the~~

~~dealer's annual report, cannot certify, under penalty of law, to the retail sale of five or more used motor vehicles during the expiring license term or calendar year for which the report is filed, shall pay a fee of \$25 in addition to the application and license fee filing and registration fees required in subsection (3).~~

~~(ii)(iii) A renewal applicant dealer licensed as a motor vehicle wrecking facility under Title 75, chapter 10, part 5, is exempt from the minimum retail sales reporting requirements of subsection (4)(a), as well as the additional renewal or the lower minimum sales requirements of this subsection (4).~~

~~(iii) If a used motor vehicle dealer also qualified as a tow truck operator loses the status of a qualified tow truck operator under 61-8-903, the dealer's license may be retained for the remainder of the license term, but after the current term, the dealer is subject to the retail sales requirements of subsection (4)(a).~~

~~(iv) If a used motor vehicle dealer also licensed as a motor vehicle wrecking facility ceases to do business as a wrecking facility and surrenders the wrecking facility license to the department of environmental quality, the dealer's license may be retained for the remainder of the license term, but after the current term, the dealer is subject to the retail sales requirements of subsection (4)(a).~~

~~(d) A dealer who fails to meet the retail sales requirements for license renewal under subsection (4)(a) is not eligible for license renewal and may not submit an application for another used motor vehicle dealer's license or a wholesaler's license for a period of 12 months from the expiration of the dealer's most recent license term.~~

~~(5) A dealer whose completed renewal application annual report is received by the department on or before December 31 of the expiring license term calendar year may, if necessary, continue dealership operations and display or use dealer or demonstrator plates under the expired license assigned and registered for the prior calendar year through the last day of February of the following year.~~

~~(6) (a) On or after January 1 of the year following the calendar year for which an annual report and filing and registration fees are due under this section, the department may not renew dealer or demonstrator plates for a dealer who has not filed the annual report and paid the fees due under this section.~~

~~(b) On or after March 1 of the year following the calendar year for which an annual report and filing and registration fees are due under this section, the department may not issue or transfer a title under the provisions of 61-4-111(1) to or from a dealer who has not filed the annual report and paid the fees, and the department shall initiate an administrative action under the provisions of 61-4-105(2) to revoke the dealer's license unless the dealer voluntarily surrenders the license, along with any previously assigned dealer and demonstrator plates, to the department for cancellation."~~

Section 12. Section 61-4-125, MCA, is amended to read:

"61-4-125. Wholesaler's license. (1) (a) The department is authorized to issue a wholesaler's license to any person whom it determines is qualified to hold a license under the provisions of this section.

(b) A wholesaler is authorized to sell used motor vehicles, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile equipment. However, a wholesaler may sell a vehicle only to a dealer, an auto auction, or another wholesaler. Retail sale of vehicles by a wholesaler is not allowed.

(c) A wholesaler's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

(d) The department shall design and issue wholesaler demonstrator plates of a similar sequence to demonstrator plates issued to dealers but that conspicuously display the term "wholesaler" or the abbreviation "W".

(2) To qualify for a wholesaler's license, an applicant shall submit a completed application, in a form prescribed by the department, that provides the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (2)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (2)(a), information concerning whether the person has:

(i) an ownership interest in a vehicle dealership or wholesaler business in Montana or another jurisdiction and, if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and, if so, *the applicant* shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any judicial proceeding pertaining to the conduct and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired ~~garage~~ *general* liability insurance, naming the department as a certificate holder under the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing a wholesaler demonstrator plate that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business and must be for a minimum of 1 year.

(d) the street address of the permanent nonresidential building or office where business records will be kept and will be made available for inspection by the department; and

(e) a bond of ~~\$35,000~~ *\$50,000* filed with the department on behalf of the applicant. The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must be approved by the department and subject to annual renewal.

(3) The application fee for a wholesaler's license is \$5, and the license fee is \$25. Both fees must accompany an original or renewal wholesaler's license application.

(4) Wholesalers may not be issued or use dealer plates, as provided in 61-4-102. However, a wholesaler may be issued and is authorized to display and use a wholesaler demonstrator plate on any type of vehicle that a wholesaler is authorized to sell. The fee for a wholesaler demonstrator plate is ~~\$3~~ *\$5*. To the extent not inconsistent with this section, use of wholesaler demonstrator plates is otherwise governed by 61-4-129.

(5) (a) A wholesaler's license must be renewed annually, and application for renewal must be filed on or before December 31 of the expiring license term.

(b) To qualify for renewal of a wholesaler's license, a wholesaler shall submit a completed application, in a form prescribed by the department, updating prior submitted information, as originally supplied under subsection (2).

(c) Additionally, the wholesaler shall certify, under penalty of law, that 12 or more vehicles of the type authorized under the license were sold by the wholesaler to a dealer, auto auction, or another wholesaler during the expiring license term. A wholesaler who was licensed for less than a full calendar year in the expiring term shall certify, under penalty of law, to the sale of an average of at least one vehicle a calendar month, or portion of a calendar month, during which the expiring license was in effect.

(d) A wholesaler who ~~fails to meet the sales requirements for license renewal under this section is not eligible for license renewal and may not submit an application for another wholesaler's license or a used motor vehicle dealer's license for a period of 12 months from the expiration of the wholesaler's most recent license term cannot, under penalty of law, certify the number of vehicle sales required under subsection (5)(c) shall pay a fee of \$25 in addition to the fees required in subsection (3).~~

(6) A wholesaler whose completed renewal application has been received by the department on or before December 31 of the expiring license term may, if necessary, operate the business and display wholesaler demonstrator plates under the expired license through the last day of February of the following year."

Section 13. Section 61-4-129, MCA, is amended to read:

"61-4-129. Assignment of demonstrator plates. (1) A dealer or wholesaler may purchase demonstrator plates at a fee of ~~\$3~~ \$5 a plate. Demonstrator plates must be issued for each vehicle type for which a dealer's license is required under 61-4-102. Demonstrator plates must be designed by the department in a manner that distinguishes demonstrator plates from dealer plates.

(2) (a) New and used motor vehicle or recreational vehicle demonstrator plates may be used *on a vehicle displaying a Monroney label or a buyer's guide label, as required by 61-4-123(2) that is:*

(i) ~~to demonstrate being demonstrated and offered for sale,~~ for not more than 72 hours, ~~a vehicle held for sale,~~ when operated by an individual holding a valid operator's license;

(ii) ~~on vehicles~~ owned by the dealership when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) ~~on vehicles~~ being tested for repair;

(iv) ~~on vehicles~~ being moved to or from a dealer's place of business for sale;

(v) ~~on vehicles~~ being moved to or from service and repair facilities before sale; and

(vi) ~~on vehicles~~ being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer demonstrator plates may be used:

(i) on units being hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes being hauled to a customer's location for setup after sale;

(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle, provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer's license plates of the dealer owning the motor vehicle; and

(v) on units being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(c) A vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the vehicle.

(3) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use demonstrator plates assigned and registered for the calendar year through the last day of February of the following year, as provided in 61-4-124(5)."

Section 14. Section 61-4-206, MCA, is amended to read:

"61-4-206. Objections — hearing. (1) A person who receives or is entitled to receive a copy of a notice provided for in 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If an objection is not filed within 15 days from the date the notice was received, the proposed action must be approved.

(2) If a timely objection has been filed, the department shall *appoint a hearings officer to preside over and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6. Within 30 days of the order of appointment, the hearings officer shall enter an order fixing the time, which must be within 30 days of the date of the order, and place of a hearing on the objection for a scheduling conference for the contested case* and shall send to the parties by certified mail with return receipt requested a copy of the *scheduling conference order and the notice provided for in 61-4-205(4).*

~~(3) The department may upon request continue the date of hearing for a period of 30 days and may upon application, but not ex parte, continue the date of hearing for an additional period of 30 days.~~

~~(4)~~(3) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, not continue, or not establish the franchise.

~~(5)~~(4) The rules of evidence for a hearing provided for in subsection (2) are the same as those found in Title 2, chapter 4. The department shall reasonably apportion all costs *related to the contested case hearing* between the parties.

~~(6)~~(5) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing must be conducted pursuant to Title 2, chapter 4.

~~(7)~~(6) A transcript of the testimony of each witness taken at the hearing must be made and preserved. Within ~~30~~ 60 days after the hearing, the

department shall make written findings of fact and conclusions and enter a final order.

~~(8)~~(7) Any party to the hearing before the department may appeal pursuant to Title 2, chapter 4.

~~(9)~~(8) The franchise agreement must continue in effect until the adjudication by the department on the verified complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process.”

Section 15. Section 61-4-301, MCA, is amended to read:

“61-4-301. Permit and transit plates for new vehicles being transported by driveaway or towaway methods — used mobile homes.

(1) (a) A person, firm, partnership, or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, or foreign countries or provinces by the driveaway or towaway methods, where the vehicles being driven, towed, or transported by the saddle-mount, towbar, or full-mount methods, or a lawful combination of these methods, will be transported over the highways of the state but once, may annually apply to the department of justice for a permit to use the highways of this state and shall pay, upon filing the application, a fee of \$100. Upon processing of the application, that department shall issue an annual permit to the applicant.

(b) A person moving used mobile homes from a point outside the state to a point inside the state may apply to the department for the permit authorized pursuant to subsection (1)(a).

(2) (a) The permitholder may also apply to the department of justice for ~~a sufficient number of distinctive transit plates or devices~~ *five sets of transit plates* showing the permit number for identification of the vehicles being transported by the permitholder, and the plates or devices may be used on a vehicle being driven, towed, or transported by and under the control of the permitholder. ~~That~~ *The* department shall collect the additional sum of ~~5~~ *\$10* for each ~~pair~~ *set* of transit plates or devices applied for and issued.

(b) *A permitholder may apply for and receive more than five sets of transit plates in a calendar year if the permitholder can demonstrate, to the satisfaction of the department, that additional sets of plates are needed based on the number of trip fees reported in Montana in the previous calendar year. The department shall collect \$10 for each additional set of transit plates issued.*

(3) The department of justice shall retain the permit and plate fees to defray costs of administering 61-4-301 through 61-4-308.

(4) The permit and transit plates or devices expire on December 31 of each year.”

Section 16. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61 apply to [sections 1 and 2].

Section 17. Effective date. [This act] is effective January 1, 2004.

Section 18. Applicability. [This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004.

Approved April 14, 2003