AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 61ST LEGISLATURE; AMENDING SECTIONS 2-4-102, 2-5-103, 2-15-1781, 2-15-3113, 7-2-2723, 7-2-2743, 7-3-121, 7-3-122, 7-3-124, 7-3-154, 7-4-2505, 7-13-2527, 7-32-303, 10-3-1304, 10-4-101, 13-15-105, 13-15-107, 13-27-316, 15-1-121, 15-6-138, 15-6-192, 15-6-221, 15-7-111, 15-8-205, 15-8-301, 15-10-420, 15-16-402, 15-17-323, 15-17-911, 15-18-411, 15-18-413, 15-24-301, 15-24-2403, 15-30-140, 15-31-121, 16-1-306, 17-7-111, 17-7-138, 18-2-401, 18-5-605, 19-3-2121, 19-21-203, 20-7-328, 20-7-329, 20-7-330, 20-9-501, 20-9-707, 22-2-107, 23-5-119, 27-20-102, 30-10-324, 31-2-106, 33-1-111, 37-17-102, 39-51-403, 39-51-503, 39-71-2352, 39-73-104, 41-2-103, 41-3-205, 41-5-103, 41-5-322, 41-5-331, 41-5-1201, 41-5-1202, 41-5-1203, 41-5-1204, 41-5-1205, 41-5-1301, 41-5-1302, 41-5-1304, 41-5-1401, 41-5-1432, 41-5-1501, 41-5-1511, 41-5-1512, 41-5-1701, 41-5-1703, 41-5-1706, 44-1-303, 45-6-312, 46-23-508, 50-5-101, 50-6-503, 50-19-101, 52-3-813, 53-6-1201, 53-19-309, 53-20-125, 53-20-128, 53-20-133, 61-4-128, 69-8-419, 69-8-421, 70-32-106, 71-1-212, 72-3-606, 75-1-110, 75-1-220, 75-2-111, 75-2-211, 75-10-101, 75-10-102, 75-10-103, 75-10-112, 75-10-1007, 76-3-511, 76-7-204, 76-13-123, 76-13-211, 76-13-402, 76-13-405, 76-13-406, 76-15-408, 77-2-362, 85-1-619, 85-2-344, 87-1-272, 87-1-504, 87-1-505, 87-2-201, AND 87-2-514, MCA; AND REPEALING SECTIONS 15-7-134, 16-1-405, AND 20-9-631, 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~~ youth 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~~ The term does not include a school district, a 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) The term does not include:

(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, budgeting, and human resource system;

(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(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;

(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

(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."

Section 2. Section 2-5-103, MCA, is amended to read:

"2-5-103. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the executive

branch of state government authorized or required by law to make rules.

(2) "Consensus" means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under 2-5-106~~,~~ unless the committee agrees upon another specified definition.

(3) "Convener" means a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure.

(4) "Facilitator" means a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator does not have decisionmaking authority.

(5) "Interest" means, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

(6) "Negotiated rulemaking" means rulemaking through the use of a negotiated rulemaking committee.

(7) "Negotiated rulemaking committee" or "committee" means an advisory committee established under 2-5-106 and authorized under 2-4-304 to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public or private organization of any character.

(9) "Rule" means an 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 but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) 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) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide ~~budgeting and~~ accounting, budgeting, and human resource system;

(e) uniform rules adopted pursuant to an interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana."

Section 3. Section 2-15-1781, MCA, is amended to read:

"2-15-1781. Board of private security. (1) There is a board of private security.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company or proprietary security organization, as defined by 37-60-101;

(b) one electronic security company, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's office;

(e) one member of the public;

(f) one member of the ~~peace officers'~~ Montana public safety officer standards and training ~~advisory~~ council; and

(g) a licensed private investigator or a registered process server.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for ~~a term~~ terms of 3 years. The terms of board members must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may ~~only~~ be only for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-3113, MCA, is amended to read:

"2-15-3113. Additional powers and duties of livestock loss reduction and mitigation board. (1) The livestock loss reduction and mitigation board shall:

(a) process claims;

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board ~~[of livestock]~~ of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board ~~[of livestock]~~ of livestock regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss reduction and mitigation board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss reduction and mitigation board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, wildlife, and parks commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113."

Section 5. Section 7-2-2723, MCA, is amended to read:

"7-2-2723. Vesting of property and legal rights. The county designated in the petition for the abandonment of a county as the county to which the territory of the abandoned county ~~shall~~ is to be attached, subject to the provisions of this part, shall:

(1) succeed to, have, possess, and own all other property, assets, liens, rights, remedies, and claims of every kind owned and belonging to or possessed by the abandoned county on the date ~~when the same~~ that county ceases to exist; and

(2) have the right to demand, collect, and receive ~~any and~~ all money to which ~~such~~ the abandoned county was entitled for taxes for which tax lien sales had not been held, for licenses, and for other demands remaining unpaid on the date ~~when such~~ that the abandoned county ceases to exist and to enforce in any manner authorized by law ~~any and~~ all ~~of such~~ rights, remedies, and claims."

Section 6. Section 7-2-2743, MCA, is amended to read:

"7-2-2743. Collection of taxes and other money. Taxes levied for all ~~such~~ funds ~~which~~ that were delinquent on the day ~~when such~~ the county ceased to exist and for which tax lien sales had not been held and all licenses and other money owing to ~~such~~ the county at ~~such~~ that time ~~shall~~ must be collected by the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and ~~become a part and placed in and~~ must be deposited to the credit of the funds of ~~such~~ the abandoned and abolished county ~~to which the same properly belong~~."

Section 7. Section 7-3-121, MCA, is amended to read:

"7-3-121. Purpose. The purpose of 7-3-121 through 7-3-125 and 7-3-141 through 7-3-161 is to provide procedures for alteration of existing forms of local government."

Section 8. Section 7-3-122, MCA, is amended to read:

"7-3-122. Definitions. As used in 7-3-121 through 7-3-125 and 7-3-141 through 7-3-161, unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

(a) a municipal or regional airport authority as provided in Title 67, chapter 11;

(b) a conservancy district as provided in Title 85, chapter 9;

(c) a conservation district as provided in Title 76, chapter 15;

(d) a drainage district as provided in Title 85, chapter 8;

(e) an irrigation district as provided in Title 85, chapter 7;

(f) a hospital district as provided in Title 7, chapter 34, part 21;

(g) a ~~flood control and~~ water conservation and flood control district as provided in Title 76, chapter 5, part 11;

(h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or

(i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Form of government" or "form" means one of the types of local government enumerated in 7-3-102 and the type of government described in 7-3-111.

(4) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 7.

(5) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(6) "Plan of government" has the meaning provided in 7-1-4121.

(7) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

(8) "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services."

Section 9. Section 7-3-124, MCA, is amended to read:

"7-3-124. Election procedure. Except as otherwise provided in 7-3-121 through 7-3-125 and 7-3-141 through 7-3-161, each election under 7-3-121 through 7-3-125 and 7-3-141 through 7-3-161 is conducted in the same manner as an election involving ballot issues or an election of local officials."

Section 10. Section 7-3-154, MCA, is amended to read:

"7-3-154. Judicial review. Judicial review to determine the validity of the procedures whereby any charter or alternative plan of government is adopted may be initiated by petition in district court of 10 or more registered voters of the local government brought within 60 days after the election at which the charter or plan of government, revision, or amendment is approved. If no petition is filed within that period, compliance with all the procedures required by 7-3-121 through 7-3-125 and 7-3-141 through 7-3-161 and the validity of the manner in which the charter or plan of government was approved is conclusively presumed. It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or plan of government may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption."

Section 11. Section 7-4-2505, MCA, is amended to read:

"7-4-2505. Amount of compensation for deputies and assistants. (1) Subject to subsection (2), the boards of county commissioners in the several counties in the state shall fix the compensation allowed any deputy or assistant of the following officers:

(a) clerk and recorder;

(b) clerk of the district court;

(c) treasurer;

(d) county attorney;

(e) auditor.

(2) (a) The salary of a deputy or an assistant listed in subsection (1), other than a deputy county attorney, may not be more than 90% of the salary of the officer under whom the deputy or assistant is serving. The salary of a deputy county attorney, including longevity payments provided in ~~7-4-2503(3)(d)~~ 7-4-2503(3)(c), may not exceed the salary of the county attorney under whom the deputy is serving.

(b) If a deputy or assistant is employed for a period of less than 1 year, the compensation of the deputy or assistant must be for the time employed~~, provided~~ and the rate of compensation may not be in excess of the rates provided by law for similar deputies and assistants."

Section 12. Section 7-13-2527, MCA, is amended to read:

"7-13-2527. List of property owners. (1) A copy of the order creating the district must be delivered to the department of revenue.

(2) The department shall, on or before August 1 of each year, prepare and certify a list of all persons owning class four property, provided for in 15-6-134, within the district and deliver a copy of the list to the board of trustees of the district."

Section 13. Section 7-32-303, MCA, is amended to read:

"7-32-303. Peace officer employment, education, and certification standards -- suspension or revocation -- penalty. (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) A sheriff of a county, the mayor of a city, a board, ~~or~~ a commission, or any other person authorized by law to appoint peace officers in this state may not appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;

(e) be of good moral character, as determined by a thorough background investigation;

(f) be a high school graduate or have passed the general ~~education~~ educational development test and ~~have~~ been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

(i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment, a peace officer shall take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice thereof must be given to the Montana public safety officer standards and training council by the employing authority.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the Montana public safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection (5)(a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the Montana public safety officer standards and training council and whose last date of employment as a peace officer was less than 36 months prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace officer may satisfy the basic educational requirements as set forth in subsection (5)(c).

(c) A peace officer referred to under ~~the provisions of~~ subsection (5)(b) or a peace officer who has completed a basic peace officer's course in another state and whose last date of employment as a peace officer was less than 60 months prior to the date of present appointment as a peace officer may, within 1 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy the basic educational requirements by successfully passing a basic equivalency test administered by the Montana law enforcement academy and successfully completing a legal training course conducted by the academy. If the peace officer fails the basic equivalency test, the peace officer shall complete the basic course within 120 days of the date of the test.

(6) The Montana public safety officer standards and training council may extend the 1-year time

requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic course or the legal training course, and an unreasonable shortage of personnel within the department. The council may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment must, upon application to the Montana public safety officer standards and training council, be issued a basic certificate by the council, certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

(8) It is unlawful for a person whose certification as a peace officer, detention officer, or detention center administrator has been revoked or suspended by the Montana public safety officer standards and training council to act as a peace officer, detention officer, or detention center administrator. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed $500, or both."

Section 14. Section 10-3-1304, MCA, is amended to read:

"10-3-1304. Radioactive waste transportation monitoring, emergency response, and training account -- purpose -- disbursement. (1) There is an account in the state special revenue fund to be known as the radioactive waste transportation monitoring, emergency response, and training account administered by the disaster and emergency services division of the department of military affairs.

(2) The money deposited into this account by the department of transportation pursuant to 10-3-1307 may be used only for the following purposes:

(a) to reimburse the highway patrol for expenses incurred in monitoring or providing escorts for motor carriers transporting high-level radioactive waste or transuranic waste through the state;

(b) to provide funding for training local emergency response personnel in handling radioactive waste accidents, spills, and other related emergencies; and

(c) to reimburse local emergency response entities for costs incurred in the event that an accident, spill,

or other related emergency occurs.

~~(3) Prior to rulemaking provided for under 10-3-1309(3), the disaster and emergency services division of the department of military affairs shall coordinate with the public service commission and the department of transportation to provide to an appropriate legislative interim committee prior to the 59th legislature a plan that prioritizes prospective disbursement of money in the account described in subsection (1).~~"

Section 15. Section 10-4-101, MCA, is amended to read:

"10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Allowable costs" means the actual costs associated with upgrading, purchasing, programming, installing, testing, operating, and maintaining data, hardware, and software necessary to comply with federal communications commission orders.

(2) "Basic 9-1-1 account" means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(a).

(3) "Basic 9-1-1 service" means a telephone service meeting the standards established in ~~10-4-102~~ 10-4-103 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point.

(4) "Basic 9-1-1 system" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, that is used for transferring the call to another point, when appropriate, and that is capable of providing basic 9-1-1 service.

(5) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (5)(a).

(6) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(7) "Direct dispatch" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

(8) "Emergency" means an event that requires dispatch of a public or private safety agency.

(9) "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(10) "Enhanced 9-1-1 account" means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(b).

(11) "Enhanced 9-1-1 service" means telephone service that meets the requirements for basic 9-1-1 service and that consists of selective routing with the capability of automatic number identification and automatic location identification at a public safety answering point enabling users of the public telecommunications system to request emergency services by dialing the digits 9-1-1.

(12) "Enhanced 9-1-1 system" includes customer premises equipment that is directly related to the operation of an enhanced 9-1-1 system, including but not limited to automatic number identification or automatic location identification controllers and display units, printers, and software associated with call detail recording, and that is capable of providing enhanced 9-1-1 service.

(13) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, any facility or service provided in connection with the services described in subsection (13)(a).

(14) "Federal communications commission order" means a federal communications commission enhanced 9-1-1 first report and order addressing 47 CFR 20.18.

(15) A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

(16) "Phase I wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number information to the public safety answering point for wireless calls.

(17) "Phase II wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number

information and location information to the public safety answering point for wireless calls.

(18) "Place of primary use" means the primary business or residential street address location at which an end-use customer's use of the commercial mobile radio service primarily occurs.

(19) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(20) "Provider" means a public utility, a cooperative telephone company, or any other entity that provides telephone exchange access services.

(21) "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.

(22) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and that may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

(23) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(24) "Subscriber" means an end user who receives telephone exchange access services or who contracts with a wireless provider for commercial mobile radio services.

(25) "Transfer" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety ~~answering~~ agency or other provider of emergency services.

(26) "Wireless enhanced 9-1-1" means either phase I wireless enhanced 9-1-1 or phase II wireless enhanced 9-1-1.

(27) "Wireless enhanced 9-1-1 account" means the wireless enhanced 9-1-1 account established in 10-4-301.

(28) "Wireless provider" means an entity, as defined in 35-1-113, that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state."

Section 16. Section 13-15-105, MCA, is amended to read:

"13-15-105. Notices relating to absentee ballot counting board. (1) Whenever an absentee ballot counting board is appointed under ~~15-15-112~~ 13-15-112, the election administrator shall:

(a) publish in the contracted newspaper of the county as provided in 7-5-2411 a notice indicating the method that will be used for counting absentee ballots; and

(b) post in a conspicuous location at the office of the election administrator, by 5 p.m. of the day before an election, a notice that indicates the place and time that the counting board for absentee ballots will meet on election day.

(2) If the count will begin while the polls are open, the notice required under subsection (1) must inform the public that any person observing the procedures of the counting board must be sequestered with the board until the polls are closed and is required to take the oath provided in 13-15-207(4)."

Section 17. Section 13-15-107, MCA, is amended to read:

"13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered elector who casts a provisional ballot has until 5 p.m. on the day after the election to provide valid identification information either in person, by facsimile, by electronic mail, or by mail postmarked no later than the day after the election.

(2) (a) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), the election administrator shall compare the elector's signature on the affirmation required under 13-13-601 to the elector's signature on the elector's voter registration card.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection ~~(6)~~ (5).

(c) If the signatures do not match, the ballot must be rejected and handled as provided in 13-15-108.

(3) A provisional ballot must be counted if the election administrator verifies the elector's eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the elector's eligibility under the rules, the elector's provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the elector is of unsound mind or serving a felony sentence in a penal institution, the elector's provisional ballot must be

counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.

(4) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

(5) A provisional ballot cast by an elector whose voter information is verified before 5 p.m. on the day after the election must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot."

Section 18. Section 13-27-316, MCA, is amended to read:

"13-27-316. Court review of attorney general opinion or approved petitioner statements. (1) If the proponents of a ballot ~~measure~~ issue believe that the ballot statements approved by the attorney general do not satisfy the requirements of 13-27-312 or believe that the attorney general was incorrect in determining that the petition was legally deficient, they may, within 10 days of the attorney general's determination regarding legal sufficiency provided for in 13-27-202, file an original proceeding in the supreme court challenging the adequacy of the statement or the attorney general's determination and requesting the court to alter the statement or modify the attorney general's determination.

(2) If the opponents of a ballot ~~measure~~ issue believe that the petitioner ballot statements approved by the attorney general do not satisfy the requirements of 13-27-312 or believe that the attorney general was incorrect in determining that the petition was legally sufficient, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an original proceeding in the supreme court challenging the adequacy of the statement or the attorney general's determination and requesting the court to alter the statement or overrule the attorney general's determination concerning the legal sufficiency of the petition. The attorney general shall respond to a complaint within 5 days.

(3) (a) Notice must be served upon the secretary of state and upon the attorney general.

(b) If the proceeding requests modification of ballot statements, an action brought under this section must state how the petitioner's ballot statements approved by the attorney general do not satisfy the requirements of 13-27-312 and must propose alternate ballot statements that satisfy the requirements of 13-27-312.

(c) (i) Pursuant to Article IV, section 7(2), of the Montana constitution, an action brought pursuant to this

section takes precedence over other cases and matters in the supreme court. The court shall examine the proposed issue and the challenged statement or determination of the attorney general and shall as soon as possible render a decision as to the adequacy of the ballot statements or the correctness of the attorney general's determination.

(ii) If the court decides that the ballot statements do not meet the requirements of 13-27-312, it may order the attorney general to revise the statements within 5 days or certify to the secretary of state a statement that the court determines will meet the requirements of 13-27-312. A statement revised by the attorney general pursuant to the court's order or certified by the court must be placed on the petition for circulation and on the official ballot.

(iii) If the court decides that the attorney general's legal sufficiency determination is incorrect and that a proposed issue does not comply with statutory and constitutional requirements governing submission of the issue to the electors, any petitions supporting the issue are void and the issue may not appear on the ballot. A proponent of the ballot issue may resubmit a revised issue, pursuant to 13-27-202, subject to the deadlines provided in this chapter.

(iv) If the court decides that the attorney general's legal deficiency determination is incorrect and that a proposed issue complies with statutory and constitutional requirements governing submission of the issue to the electors, the attorney general shall prepare ballot statements pursuant to 13-27-312 and forward the statements to the secretary of state within 5 days of the court's decision.

(4) A petition for a proposed ballot issue may be circulated by a signature gatherer upon transmission of the sample petition form by the secretary of state pending review under this section. If, upon review, the attorney general or the supreme court revises the petition form or ballot statements, any petitions signed prior to the revision are void.

(5) An original proceeding in the supreme court under this section is the exclusive remedy for a challenge to the petitioner's ballot statements, as approved by the attorney general, or the attorney general's legal sufficiency determination. A ballot issue may not be invalidated under this section after the secretary of state has certified the ballot under 13-12-201.

(6) This section does not limit the right to challenge a constitutional defect in the substance of an issue approved by a vote of the people."

Section 19. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment -- appropriation. (1) The amount calculated pursuant to this subsection, as adjusted pursuant to subsection (3)(a)(i), 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, boat, and aircraft 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) 25-9-506; and

(iv) 27-9-103;

(e) certificate of title fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;

(g) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(h) late filing fees pursuant to 61-3-220;

(i) title and registration fees pursuant to 61-3-203;

(j) veterans' cemetery license plate fees pursuant to 61-3-459;

(k) county personalized license plate fees pursuant to 61-3-406;

(l) special mobile equipment fees pursuant to 61-3-431;

(m) single movement permit fees pursuant to 61-4-310;

(n) state aeronautics fees pursuant to 67-3-101; and

(o) 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) 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. 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 2007 to determine the fiscal year 2007 entitlement share payments, the department shall subtract from the fiscal year 2006 entitlement share payments the following amounts:

Beaverhead	$6,972
Big Horn	$52,551
Blaine	$13,625

Broadwater	$2,564
Carbon	$11,537
Carter	$407
Cascade	$100,000
Chouteau	$3,536
Custer	$7,011
Daniels	$143
Dawson	$3,893
Fallon	$1,803
Fergus	$9,324
Flathead	$100,000
Gallatin	$160,000
Garfield	$91
Glacier	$3,035
Golden Valley	$2,282
Granite	$4,554
Hill	$31,740
Jefferson	$5,700
Judith Basin	$1,487
Lake	$38,314
Lewis and Clark	$160,000
Liberty	$152
Lincoln	$3,759
Madison	$8,805
McCone	$1,651
Meagher	$2,722
Mineral	$2,361
Missoula	$200,000
Musselshell	$23,275

Park	$6,582
Petroleum	$36
Phillips	$653
Pondera	$10,270
Powder River	$848
Powell	$5,146
Prairie	$717
Ravalli	$93,090
Richland	$3,833
Roosevelt	$9,526
Rosebud	$19,971
Sanders	$30,712
Sheridan	$271
Stillwater	$12,117
Sweet Grass	$2,463
Teton	$5,560
Toole	$7,113
Treasure	$54
Valley	$6,899
Wheatland	$918
Wibaux	$72
Yellowstone	$270,000
Anaconda-Deer Lodge	$20,707
Butte-Silver Bow	$53,057
Alberton	$675
Bainville	$258
Baker	$2,828
Bearcreek	$143
Belgrade	$11,704

Belt	$1,056
Big Sandy	$1,130
Big Timber	$2,910
Billings	$163,499
Boulder	$2,340
Bozeman	$52,805
Bridger	$1,303
Broadus	$766
Broadview	$258
Brockton	$414
Browning	$1,830
Cascade	$1,374
Chester	$1,430
Chinook	$2,275
Choteau	$3,050
Circle	$1,018
Clyde Park	$572
Colstrip	$4,090
Columbia Falls	$6,805
Columbus	$3,245
Conrad	$4,562
Culbertson	$1,216
Cut Bank	$5,316
Darby	$1,348
Deer Lodge	$5,708
Denton	$503
Dillon	$6,928
Dodson	$194
Drummond	$561

Dutton	$661
East Helena	$2,888
Ekalaka	$689
Ennis	$1,518
Eureka	$1,733
Fairfield	$1,120
Fairview	$1,152
Flaxville	$143
Forsyth	$3,286
Fort Benton	$2,579
Fort Peck	$393
Froid	$328
Fromberg	$855
Geraldine	$457
Glasgow	$5,361
Glendive	$8,099
Grass Range	$254
Great Falls	$96,422
Hamilton	$7,148
Hardin	$5,920
Harlem	$1,422
Harlowton	$1,678
Havre	$16,223
Helena	$45,877
Hingham	$263
Hobson	$397
Hot Springs	$912
Hysham	$482
Ismay	$43

Joliet	$1,006
Jordan	$606
Judith Gap	$263
Kalispell	$28,144
Kevin	$304
Laurel	$10,804
Lavina	$361
Lewistown	$10,170
Libby	$4,475
Lima	$397
Livingston	$12,145
Lodge Grass	$889
Malta	$3,389
Manhattan	$2,485
Medicine Lake	$410
Melstone	$234
Miles City	$14,152
Missoula	$104,264
Moore	$319
Nashua	$536
Neihart	$149
Opheim	$180
Outlook	$125
Philipsburg	$1,612
Pinesdale	$1,413
Plains	$2,007
Plentywood	$3,185
Plevna	$225
Polson	$7,722

Poplar	$1,544
Red Lodge	$3,903
Rexford	$263
Richey	$309
Ronan	$3,262
Roundup	$3,280
Ryegate	$465
Saco	$354
Scobey	$1,798
Shelby	$5,677
Sheridan	$1,150
Sidney	$7,747
Stanford	$737
Stevensville	$3,063
St. Ignatius	$1,367
Sunburst	$709
Superior	$1,521
Terry	$1,011
Thompson Falls	$2,272
Three Forks	$3,130
Townsend	$3,286
Troy	$1,654
Twin Bridges	$695
Valier	$817
Virginia City	$223
Walkerville	$1,183
West Yellowstone	$2,083
Westby	$263
White Sulphur Springs	$1,734

Whitefish	$9,932
Whitehall	$1,889
Wibaux	$893
Winifred	$259
Winnett	$314
Wolf Point	$4,497

(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) 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.

(b) (i) 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.

(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

(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) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(o) 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 (8)(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.

(9) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(10) 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.

(11) 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.

(12) 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 20. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property -- description -- taxable percentage. (1) Class eight property

includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five under 15-6-135;

(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 15-6-219, 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 in 15-6-220, 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 61-1-101;

(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, the following definitions apply:

(a) ~~"coal~~ "Coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

~~(3)~~(b) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

~~(4)~~(3) Class eight property is taxed at 3% of its market value.

~~(5)~~(4) The class eight property of a person or business entity that owns an aggregate of $20,000 or less in market value of class eight property is exempt from taxation."

Section 21. Section 15-6-192, MCA, is amended to read:

"15-6-192. Application for classification as new industrial property. (1) Any person, firm, or other group seeking to qualify its property for classification as new industrial property under class five, as provided in 15-6-135, shall make application to the department ~~of revenue~~ on a form provided by the department.

(2) The department ~~of revenue~~ shall promulgate rules for the determination of what constitutes an adverse impact, taking into consideration the number of people to be employed and the size of the community in which the location of the industrial property is contemplated.

(3) If the department makes an initial determination that the industrial property qualifies as new industrial property under class five, it shall publish notice of and hold a public hearing to determine whether the property should retain this classification.

(4) Local taxing authority officials may waive their objections to the property's classification in class five if the owner of the new industrial property agrees to prepay property taxes on the property during the construction period. The maximum amount of prepayment ~~shall be~~ is the amount of tax the owner would have paid on the property if it had not been classified under class five.

(5) If a new industrial facility qualifies under class five, its property tax payment may not be reduced for reimbursement of its prepaid taxes as provided in 15-16-201 until the class five qualification expires."

Section 22. Section 15-6-221, MCA, is amended to read:

"15-6-221. Exemption for rental housing providing affordable housing to lower-income tenants. (1) That portion of residential rental property that is dedicated to providing affordable housing for lower-income persons is exempt from property taxation in any year that:

(a) the property is owned and operated by an entity, including but not limited to a limited partnership, limited liability corporation, or limited liability partnership in which a general partner is a nonprofit corporation

exempt from taxation under section 26 U.S.C. 501(c)(3), as amended, and incorporated and admitted under the Montana Nonprofit Corporation Act as provided in Title 35, chapter 2, or is a housing authority ~~created under~~ as defined in 7-15-4402 and the nonprofit general partner actively participates in accordance with the definition found in 26 U.S.C. 469(i). Section 26 U.S.C. 469(i) is applicable without reference to section 26 U.S.C. 469(i)(6).

(b) the board of housing, established in 2-15-1814, has allocated low-income housing tax credits to the owner~~,~~ under 26 U.S.C. 42, which requires that:

(i) at least 20% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to tenants whose household incomes do not exceed 50% of the median family income, adjusted for family size, for the county in which the property is located; or

(ii) at least 40% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to persons whose household incomes do not exceed 60% of the median income, adjusted for family size, for the county in which the property is located;

(c) a deed restriction or other legally binding instrument restricts the property's usage and provides that the units designated for use by lower-income households must be made available to or occupied by lower-income households for the period required to qualify for low-income housing tax credits at rents that do not exceed those prescribed by the terms of the deed restriction or other legally binding instruments;

(d) the property meets a public purpose in providing housing to an underserved population and provides a minimum of 50% of the units in the property to tenants at 50% of the median family income for the area, with rents restricted to a maximum of 30% of 50% of median family income, as calculated under 26 U.S.C. 42; and

(e) the owner's partnership or operating agreement or accompanying document provides that at the end of the compliance period, as that term is defined in 26 U.S.C. 42, the ownership of the property may be transferred to the nonprofit corporation or housing authority general partner as provided for in 26 U.S.C. 42(i)(7).

(2) Prior to the allocation of low-income housing tax credits to the owner, as provided in subsection (1)(b), the unit of local government where the proposed project is to be located shall give due notice, as defined in 76-15-103, and hold a public hearing to solicit comment on whether the proposed qualifying low-income rental housing property meets a community housing need. A record of the public hearing must be forwarded to the board of housing for consideration in granting the allocation of tax credits.

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

(a) "Median family income" means the household income, adjusted for family size, determined annually

by the United States department of housing and urban development, or its successor agency, to be the median family income for persons residing within each county of the state.

(b) A residential unit is "rent-restricted" if it satisfies the criteria of 26 U.S.C. 42(g)(2)."

Section 23. Section 15-7-111, MCA, is amended to read:

"15-7-111. Periodic revaluation of certain taxable property. (1) The department shall administer and supervise a program for the revaluation of all taxable property within ~~classes three, four, and ten~~ class three under 15-6-133, class four under 15-6-134, and class ten under 15-6-143. All other property must be revalued annually.

(2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.

(3) The department ~~of revenue~~ shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, 2009, effective for January 1, 2009, and each succeeding 6 years. The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phasein for each year is 16.66%."

Section 24. Section 15-8-205, MCA, is amended to read:

"15-8-205. Initial assessment of class four trailer, manufactured home, and mobile home property -- when. The department shall assess ~~all class four~~ trailer, manufactured home, and mobile home property as class four property under 15-6-134 immediately upon arrival in the county if the taxes have not been previously paid for that year in another county in Montana."

Section 25. Section 15-8-301, MCA, is amended to read:

"15-8-301. Statement -- what to contain. (1) The department may require from a person a statement under oath setting forth specifically all the real and personal property owned by, in possession of, or under the control of the person at midnight on January 1. The statement must be in writing, showing separately:

(a) all property belonging to, claimed by, or in the possession or under the control or management of the person;

(b) all property belonging to, claimed by, or in the possession or under the control or management of any firm of which the person is a member;

(c) all property belonging to, claimed by, or in the possession or under the control or management of any corporation of which the person is president, secretary, cashier, or managing agent;

(d) the county in which the property is situated or in which the property is liable to taxation and, if liable to taxation in the county in which the statement is made, also the city, town, school district, road district, or other revenue districts in which the property is situated;

(e) an exact description of all lands, improvements, and personal property;

(f) all depots, shops, stations, buildings, and other structures erected on the space covered by the right-of-way and all other property owned by any person owning or operating any railroad within the county.

(2) The department shall notify the taxpayer in the statement for reporting personal property owned by a business or used in a business that the statement is for reporting business equipment and other business personal property described in Title 15, chapter 6, part 1. A taxpayer owning exempt business equipment is subject to limited reporting requirements; however, all new businesses shall report their class eight property, as defined in 15-6-138, so that the department can determine the market value of the property. The department shall by rule develop reporting requirements for business equipment to limit the annual reporting of exempt business equipment to the extent feasible.

(3) Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer is not required to include the property in that person's statement but the statement must show the name of the person or officer who made the statement in which the property is included.

(4) The fact that a statement is not required or that a person has not made a statement, under oath or otherwise, does not relieve the person's property from taxation."

Section 26. 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) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(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) If a tax increment financing district terminates prior to the certification of taxable values as required

in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property under 15-6-134 or as nonqualified agricultural land as described in 15-6-133(1)(c).

(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;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326; or

(iv) a levy for the support of a study commission under 7-3-184.

(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) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating

funds by a county or municipality during that time.

(11) 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."

Section 27. Section 15-16-402, MCA, is amended to read:

"15-16-402. Tax on personal property lien on realty -- separate assessment -- filing of mortgage satisfaction. (1) The tax due on personal property is a prior lien upon the personal property. The lien has precedence over any other lien, claim, or demand upon the personal property. Except as provided in subsection (2), the tax on personal property is also a lien upon the real property of the owner of the personal property on and after January 1 of each year.

(2) The taxes on personal property based on a taxable value up to and including $10,000 are a first and prior lien upon the real property of the owner of the personal property. Taxes on personal property based on a taxable value in excess of $10,000 are a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon the real property appearing of record in the office of the clerk and recorder of the county where the real property is situated, at or before the time the personal property tax attached to the real property, has filed a notice as provided in subsection (3). If the notice is filed, the personal property taxes on the taxable value in excess of $10,000 are not a lien upon the owner's real property. The county treasurer shall, at the request of a mortgagee or lienholder, issue a statement of the personal property tax due on the taxable value up to and including $10,000. Personal property taxes on a taxable value up to $10,000 may be paid, redeemed from a tax lien sale as provided by law, or discharged separately from any personal property taxes in excess of that amount. Payment of the taxes on a taxable value up to $10,000, as provided in this subsection, discharge the tax lien upon the personal property of the owner to the extent of the payment in the order that the person paying the tax directs.

(3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file each year in the office of the county treasurer of the county and with the department a notice giving:

(a) the name and address of the mortgagee and holder of the mortgage or lien;

(b) the name of the reputed owner of the land;

(c) the description of the land;

(d) the date of record and expiration of the mortgage or lien;

(e) the amount of the mortgage or lien; and

(f) a statement that the holder claims the benefit of the provisions of this section.

(4) The notice is ineffectual as to any taxes that are a lien upon real property prior to the filing of the notice as provided in subsection (3).

(5) A holder of a mortgage on real property upon which personal property taxes are a lien under this section, when the owner of the real property and personal property has failed to pay taxes due on the real property and personal property for 1 or more years, may file with the department a written request to have the personal property and real property of the owner separately assessed. The request must be made by certified mail at least 10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department of the request, the department shall make a separate assessment of real and personal property of the owner of the property, and the personal property taxes may not be a lien upon the mortgaged real property. The personal property taxes must be collected in the manner provided by law for other personal property.

(6) The holder of a mortgage or lien upon real property who files a certificate of satisfaction and the proof and acknowledgment of filing the certificate, as provided for in 71-1-211, shall file a copy of the certificate and the proof and acknowledgment with:

(a) the county treasurer if the holder has filed a notice under subsection (3); and

(b) the department if the holder has filed a written request under subsection (5).

(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

Section 28. Section 15-17-323, MCA, is amended to read:

"15-17-323. Assignment of rights -- form. (1) A tax lien sale certificate or other official record in which the county is listed as the purchaser must be assigned by the county treasurer to any person who, after providing proof of mail notice to the person to whom the property was assessed, as required by subsection (5), pays to the county the amount of the delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency.

(2) (a) The assignment made under subsection (1) must be in the form of an assignment certificate in

substantially the following form:

I, ..., the treasurer of ..... County, state of Montana, hereby certify that a tax lien sale for tax year 20..., in the county of ....., was held on ..... (date), for the purpose of liquidating delinquent assessments, and I further certify that a property tax lien for delinquent taxes in the following property ..... (insert property description) was offered for sale and that there was no purchaser of the property tax lien. Accordingly, the county was listed as the purchaser as required by 15-17-214, MCA. As of the date of this certificate, the delinquency, including penalties, interest, and costs amounting to $ ....., has not been liquidated by the person to whom the property was assessed, nor has the delinquency been otherwise redeemed.

Because there has been no liquidation of the delinquency or other redemption, I hereby assign all rights, title, and interest of the county of ....., state of Montana, acquired in the property by virtue of the tax lien sale to ..... (name and address of assignee) to proceed to obtain a tax deed to the property or receive payment in case of redemption as provided by law.

Witness my hand and official seal of office this ..... day of ....., 20...

..... County Treasurer

..... County

(b) A copy of an assignment certificate must be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on lien assignments and property tax lien sales.

(3) An assignment made by a purchaser other than the county, by an assignee of the county, or by a previous assignee may be made for any consideration whatsoever. An assignment so made is legal and binding only upon filing with the county treasurer a statement that the purchaser's or other assignee's interest in the property has been assigned. The statement must contain:

(a) the name and address of the new assignee;

(b) the name and address of the original purchaser of the tax lien sale certificate;

(c) the name and address of each previous assignee, if any;

(d) a description of the property upon which the property tax lien was issued, which must contain the same information as contained in the tax lien sale certificate or assignment certificate, as appropriate;

(e) the signature of the party, whether it is the purchaser or the assignee, making the assignment;

(f) the signature of the new assignee; and

(g) the date on which the statement was signed.

(4) If the certificate described in subsection (1) or the statement described in subsection (3) is lost or destroyed, the county treasurer shall, upon adequate proof and signed affidavit by the assignee that loss or destruction has occurred, issue a duplicate certificate to the assignee.

(5) Prior to making a payment under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least 2 weeks prior to the date of the payment. The person making the payment shall provide proof of the mailing.

(6) The provisions of this section apply to any sale of land for which a treasurer's deed was not issued on or before March 5, 1917, or for which a tax deed was not issued on or before April 23, 1987, and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at a tax lien sale may now have."

Section 29. Section 15-17-911, MCA, is amended to read:

"15-17-911. Sale of personal property for delinquent taxes -- fee -- disposition of proceeds -- unsold property. (1) The tax on personal property may be collected and payment enforced by the seizure and sale of any personal property in the possession of the person assessed. Seizure and sale are authorized at any time after the date the taxes become delinquent or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to one method does not bar the right to resort to any other method. Any of the methods provided may be used until the full amount of the tax is collected.

(2) The provisions of 15-16-119 and this section apply to a seizure and sale under subsection (1).

(3) (a) A sale under subsection (1) must be:

(i) conducted at public auction;

(ii) conducted under the provisions of 25-13-701(1)(b); and

(iii) noticed as a treasurer's sale of personal property seized for taxes.

(b) The return on the levy and sale must be signed by the sheriff or deputy sheriff as ex officio deputy county treasurer.

(4) (a) The county treasurer shall charge $25 or a fee set by the county commissioners, plus the cost, as defined in 15-17-121, of the collection of delinquent personal property taxes. The cost must be assessed

against the delinquent taxpayer and is in addition to any sheriff's fees, mileage, and costs charged under subsection (4)(b).

(b) The sheriff is entitled to the fees, mileage, and costs as provided in 7-32-2141 and 7-32-2143, which must be assessed against the delinquent taxpayer.

(5) On payment of the price bid for any property sold as provided in this section, delivery of the property, with a bill of sale, vests the title of the property in the purchaser.

(6) (a) After sale of the property, the proceeds of the sale must be used first to reimburse the county for all costs and charges incurred in seizing the property and conducting the sale. Any excess, up to the total amount of the taxes owed, must be distributed proportionally to the funds that would have received the taxes if they had been paid before becoming delinquent. Any remaining excess, up to the amount of the penalty and interest owed, must then be distributed proportionally to the fund that would have received the penalty and interest if they had been paid in full.

(b) Any money collected in excess of the delinquent tax, penalties, interest, costs, and charges must be returned to the person owning the property prior to the sale, if known. If the person does not claim the excess immediately following the sale, the treasurer shall deposit the money in the county treasury for a period of 1 year from the date of sale. If the person has not claimed the excess within 1 year from the date of sale, the county treasurer shall deposit the amount in the county general fund and the person has no claim to it.

(7) Any property seized for the purpose of liquidating a delinquency by a tax lien sale that remains unsold following a sale may be left at the place of sale at the risk of the owner.

(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

(9) The county commission, in its discretion, may cancel any personal property taxes, including penalty, interest, costs, and charges that remain unsatisfied after the property upon which the taxes were assessed had been seized and sold. If the taxes are canceled, one copy of the order of cancellation must be filed with the county clerk and recorder and one copy with the county treasurer."

Section 30. Section 15-18-411, MCA, is amended to read:

"15-18-411. Action to quiet title to tax deed -- notice. (1) (a) In an action brought to set aside or annul any tax deed or to determine the rights of a purchaser to real property claimed to have been acquired through

tax proceedings or a tax lien sale, the purchaser, upon filing an affidavit, may obtain from the court an order directed to the person claiming to:

(i) own the property;

(ii) have any interest in or lien upon the property;

(iii) have a right to redeem the property; or

(iv) have rights hostile to the tax title.

(b) The person described in subsections (1)(a)(i) through (1)(a)(iv) is referred to as the true owner.

(c) Except as provided in subsection (1)(d), the order described in subsection (1)(a) may command the true owner to:

(i) deposit with the court for the use of the purchaser:

(A) the amount of all taxes, interest, penalties, and costs that would have accrued if the property had been regularly and legally assessed and taxed as the property of the true owner and was about to be redeemed by the true owner; and

(B) the amount of all sums reasonably paid by the purchaser following the order and after 3 years from the date of the tax lien sale to preserve the property or to make improvements on the property while in the purchaser's possession, as the total amount of the taxes, interest, penalties, costs, and improvements is alleged by the plaintiff and as must appear in the order; or

(ii) show cause on a date to be fixed in the order, not exceeding 30 days from the date of the order, why the payment should not be made.

(d) The deposit provided for in subsection (1)(c) may not be required of a person found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(2) The affidavit must list the name and address of the true owner and whether the owner is in the state of Montana, if known to the plaintiff, or state that the address of the true owner is not known to the plaintiff.

(3) (a) The order must be filed with the county clerk and a copy served personally upon each person shown in the affidavit claiming to be a true owner and whose name and address are reasonably ascertainable.

(b) Jurisdiction is acquired over all other persons by:

(i) publishing the order once in the official newspaper of the county;

(ii) posting the order in three public places in the county at least 10 days prior to the hearing; and

(iii) giving a copy to the county treasurer."

Section 31. Section 15-18-413, MCA, is amended to read:

"15-18-413. Title conveyed by deed -- defects. (1) All deeds executed more than 3 years after the applicable tax lien sale convey to the grantee absolute title to the property described in the deed as of 3 years following the date of sale of the property interest at the tax lien sale.

(2) The conveyance includes:

(a) all right, title, interest, estate, lien, claim, and demand of the state of Montana and of the county in and to the property; and

(b) the right, if the tax deed, tax lien sale, or any of the tax proceedings upon which the deed may be based are attacked and held irregular or void, to recover the unpaid taxes, interest, penalties, and costs that would accrue if the tax proceedings had been regular and it was desired to redeem the property.

(3) The tax deed is free of all encumbrances except as provided in 15-18-214(1)(a) through (1)(c).

(4) A tax deed is prima facie evidence of the right of possession accruing as of the date of the expiration of the redemption period described in 15-18-111.

(5) (a) Subject to subsection (5)(b), if any tax deed or deed purporting to be a tax deed is issued more than 3 years and 30 days after the date of the sale of the property interest at the applicable tax lien sale, the grantee may publish in the official newspaper of the county, once a week for 2 consecutive weeks, a notice entitled "Notice of Claim of a Tax Title". The notice must:

(i) describe all property claimed to have been acquired by a tax deed;

(ii) contain an estimate of the amount due on the property for delinquent taxes, interest, penalties, and costs;

(iii) contain a statement that for further specific information, reference must be made to the records in the office of the county treasurer;

(iv) list the name and address of record of the person in whose name the property was assessed or taxed; and

(v) contain a statement that demand is made that the true owner shall, within 30 days after the later of service or the first publication of the notice, pay to the county treasurer for use by the claimant the amount of taxes, interest, penalties, and costs as the same appear in the records of the county treasurer to redeem the

property or the true owner may bring a suit to quiet the true owner's title or to set aside the tax deed.

(b) The notice described in subsection (5)(a) must be served on a taxpayer whose name and address are reasonably ascertainable.

(6) (a) Provided that the statutory requirements for a notice of intended issuance of a tax deed required by 15-18-212 have been complied with and if within the 30-day period the taxes, interest, penalties, and costs are not paid or a quiet title action is not brought, all defects in the tax proceedings and any right of redemption are considered waived. Except as provided in subsection (6)(b), after the 30-day period, the title to the property described in the notice and in the tax deed is valid and binding, irrespective of any irregularities, defects, or omissions in any of the provisions of the laws of Montana regarding the assessment, levying of taxes, or sale of property for taxes, whether or not the irregularities, defects, or omissions could void the proceedings.

(b) The proceedings in subsection (6)(a) are void if the taxes were not delinquent or have been paid."

Section 32. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into state -- assessment -- exceptions -- custom combine equipment. (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) personal property, excluding livestock, brought into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property belonging to an owner or user who is engaged in a gainful occupation or business enterprise in the state; or

(c) property that becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) This section does not levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) Except as provided in 15-6-217, a motor vehicle that is brought into this state by a nonresident person temporarily employed in Montana and used exclusively for transportation of the person is subject to registration under 61-3-701.

(5) Agricultural harvesting machinery classified ~~under~~ as class eight property under 15-6-138, licensed in another state, and operated on the land of a person other than the owner of the machinery under a contract for hire is subject to a fee in lieu of tax of $35 for each machine for the calendar year in which the fee is collected. The machinery is subject to taxation under class eight only if the machinery is sold in Montana."

Section 33. Section 15-24-2403, MCA, is amended to read:

"15-24-2403. Expanding industry taxable value decrease -- application -- approval -- reports. (1) After December 31, 1991, an existing industry with qualifying property that represents an expansion of the industry is entitled to receive a decrease in the tax rate for class eight property if the property results in the hiring of full-time qualifying employees for each year in which the taxable value decrease is in effect.

(2) A person, firm, or other group seeking to qualify its property for the taxable value decrease under subsection (1) shall apply to the department ~~of revenue~~ on a form provided by the department. The application must include:

(a) the description of the personal property that may qualify for the taxable value decrease;

(b) the date on which the qualifying property is intended to be operational;

(c) the rate of pay and number of existing employees and new employees to be used in the operation of the qualifying property;

(d) a statement that the new employees are in addition to the existing workforce of the industry and the specific responsibilities of each new employee; and

(e) a statement that all the applicant's taxes are paid in full.

(3) The department shall make an initial determination as to whether the industry qualifies for the taxable value decrease.

(4) (a) If the department determines that the property qualifies for a taxable value decrease, the governing body of the affected county, consolidated government, incorporated city or town, or school district shall give due notice as defined in 76-15-103 and hold a public hearing. Each governing body may either approve or disapprove the grant of taxable value decrease. A governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The resolution provided for in subsection (4)(a) must include the document that grants approval of the application that was submitted to the department by the taxpayer seeking the taxable value decrease.

(5) The tax reduction described in subsection (1) applies to:

(a) the number of mills levied and assessed by each governing body approving the benefit over which the governing body has sole discretion; and

(b) statewide levies if the governing body approving the tax reduction is a county, consolidated government, or incorporated city or town.

(6) The number of new employees used by the department to calculate the taxable value decrease in subsection (7) must be determined by the wages paid to qualifying employees. A qualifying employee paid the amount of the average wage as determined by the quarterly statistical report published by the department of labor and industry is considered one new employee. Qualifying employees are considered equivalent new employees if they are paid three-quarters of the average wage or more. The qualifying employee is the equivalent of a new employee in the same fraction that ~~his~~ the employee's wages are to the average wage, but a qualifying employee may not be considered more than two new employees.

(7) (a) Qualifying property is entitled to a decrease in the taxable rate of class eight property under 15-6-138 based upon a percentage difference between a possible low rate of 3% and a high rate of the existing class eight property tax rate. The reduced taxable value rate is determined by calculating the inverse of the number of equivalent new employees divided by the number of existing employees and multiplying the product of that calculation by the decimal equivalent of the tax rate for class eight property.

(b) For each year that the taxable value decrease is in effect, the taxpayer shall report by March 1 to the department, on forms prescribed by the department, the wages of and the number of qualifying employees that are used in the operation of the qualifying property for which the taxable value decrease was granted."

Section 34. Section 15-30-140, MCA, is amended to read:

"15-30-140. Refundable income tax credit -- statewide equalization property tax levies on principal residence -- rules. (1) (a) There is a credit against the tax imposed by this chapter, which is calculated by multiplying the amount of property taxes imposed and paid on a property taxpayer's principal residence under 20-9-331, 20-9-333, and 20-9-360 on $20,000 of market value on the residence times the relief multiple.

(b) ~~(i)~~ As used in subsection (1)(a), the relief multiple is a number used to change the amount of tax relief allowed under this section. The relief multiple is 0. Each interim, the revenue and transportation interim committee shall, based upon actual and projected state revenue and spending and any other appropriate factors, determine

if a change in the relief multiple is justified. If a change is justified, the committee shall request a bill to change the relief multiple.

~~(ii) The department of administration shall certify to the budget director on August 1, 2007, the amount of unaudited general fund revenue received in fiscal year 2007 as recorded when the fiscal year 2007 statewide accounting, budgeting, and human resources system records are closed in July 2007. Fiscal year 2007 is the period from July 1, 2006, to June 30, 2007. General fund revenue is as recorded in the statewide accounting, budgeting, and human resources system using generally accepted accounting principles in accordance with 17-1-102(2). If the unaudited general fund revenue received in fiscal year 2007 exceeds $1,802,000,000, for each $1,000,000 greater than $1,802,000,000, the factor in subsection (1)(b)(i) must increase by 0.1 for tax year 2007 only.~~

(2) As used in this section, "principal residence" means a class four residential dwelling under 15-6-134 that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling and that is occupied by the owner for at least 7 months during the tax year.

(3) Only one claim may be made with respect to any property.

(4) If the amount of the credit exceeds the claimant's liability under this chapter, the amount of the excess must be refunded to the claimant. The credit may be claimed even if the claimant has no income taxable under this chapter.

(5) The department may adopt rules to implement and administer this section."

Section 35. Section 15-31-121, MCA, is amended to read:

"15-31-121. Rate of tax -- minimum tax -- distribution of revenue. (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 is 6 3/4% of all net income for the tax period.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 is 7% of all taxable net income for the tax period.

(3) Each corporation subject to taxation under this part shall pay a minimum tax of not less than $50.

~~(4) For fiscal year 2005, the tax collected from water's-edge corporations must be deposited as follows:~~

~~(a) $375,000 in the state special revenue fund to the credit of the department of public health and human~~

~~services for state matching funds to maximize federal funds for medicaid health services; and~~

~~(b) the balance in the state general fund.~~"

Section 36. Section 16-1-306, MCA, is amended to read:

"16-1-306. Revenue to be paid to state treasurer. Except as provided in 16-1-404, ~~16-1-405,~~ 16-1-406, and 16-1-411, all fees, charges, taxes, and revenue collected by or under authority of the department must, in accordance with the provisions of 17-2-124, be deposited to the credit of the state general fund."

Section 37. Section 17-7-111, MCA, is amended to read:

"17-7-111. Preparation of state budget -- agency program budgets -- form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)~~(a),~~ or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the

forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for ~~only~~ agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or

reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and

(h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide project budget summary as provided in 2-17-526;

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from ~~such~~ the accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) (a) The department of revenue shall make Montana individual income tax information available by

removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the budget director when the values on the requested return, including estimated payments, are considered necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed."

Section 38. Section 17-7-138, MCA, is amended to read:

"17-7-138. Operating budget. (1) (a) Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act. An explanation of any significant change in agency or program scope must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2. An explanation of any significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. A significant change may not conflict with a condition contained in the general appropriations act. If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and conditions contained in the general appropriations act.

(b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(i) the operating budget change exceeds $1 million; or

(ii) the operating budget change exceeds 25% of a budget category and the change is greater than $25,000. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and $25,000 threshold.

(2) The expenditure of money appropriated in the general appropriations act to the board of regents, on behalf of the university system units, as defined in 17-7-102, is contingent upon approval of a comprehensive operating budget by October 1 of each fiscal year. The operating budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Transfers and related justification must be submitted to the office of budget and program planning and to the legislative fiscal analyst.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget for all funds, other than higher education funds, and any approved changes on the statewide ~~budget and accounting state financial system~~ accounting, budgeting, and human resource system. Documents implementing approved changes must be signed. The operating budget for higher education funds must be recorded on the university financial system, with separate accounting categories for each source or use of state government funds. State sources and university sources of funds may be combined for the general operating portion of the current unrestricted funds."

Section 39. 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~~ "Bona fide resident of Montana" ~~is~~ means 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 Income 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 Income 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 40. Section 18-5-605, MCA, is amended to read:

"18-5-605. Implementation. (1) For the purposes of ensuring the effective phasing in of nonvisual access technology procurement, the head of any state agency may not approve exclusion of the technology access clause required by 18-5-604 from any contract with respect to the compatibility of standard operating systems and software with nonvisual access software and peripheral devices or with respect to the initial design, development, and installation of information systems, including the design and procurement of interactive equipment and software.

(2) This section does not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

(3) Notwithstanding subsection (2), the applications programs and underlying operating systems, including the format of the data, used for the manipulation and presentation of information must permit the installation and effective use of nonvisual access software and peripheral devices.

(4) Compliance with this part with regard to information technology purchased prior to July 1, 2001, must be achieved at the time of procurement of an upgrade or replacement of existing equipment or software.

~~(5) Until July 1, 2003, a state agency may be exempted from the requirements of 18-5-604 if the cost would cause the state agency's budget to exceed legislative appropriations.~~

~~(6)~~(5) A state agency may be exempted from the provisions of this part if the state agency makes a good faith determination that compliance would result in an undue burden."

Section 41. Section 19-3-2121, MCA, is amended to read:

"19-3-2121. Determination and adjustment of plan choice rate and contribution allocations. (1) The board shall periodically review the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in ~~19-3-2117(2)(b)~~ 19-3-2117(2)(a)(ii) must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined

benefit plan that is the result of member selection of the defined contribution plan; and

(b) as determined under subsection (4), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan member's appropriate share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the compensation paid to all of the members in the defined benefit plan, divided by the compensation paid to all of the members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the amount provided in subsection (2)(a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4)(a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under ~~19-3-2117(2)(b)~~ 19-3-2117(2)(a)(ii) must be increased or decreased accordingly. If the plan choice

rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a)(i) must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a)(i) must be increased by that amount.

(6) If the board determines that the contribution rate to the disability plan under ~~19-3-2117(2)(d)~~ 19-3-2117(2)(a)(iv) should be increased, the employer contribution to each member's account under 19-3-2117(2)(a)(i) must be decreased by that amount. If the board determines that the contribution rate to the disability plan under ~~19-3-2117(2)(d)~~ 19-3-2117(2)(a)(iv) should be decreased, the employer contribution to each member's account under 19-3-2117(2)(a)(i) must be increased by that amount.

(7) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

(8) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination."

Section 42. 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) (a) Each program participant shall contribute an amount equal to the member's contribution required under 19-20-602.

(b) (i) Each month, the board of regents shall calculate an amount equal to 1% of each participant's earned compensation, total the amounts calculated, and certify to the state treasurer the total amount for all participants combined.

(ii) Within 1 week of receiving notice of the certified amount, the state treasurer shall transfer the certified amount from the general fund to the board of regents. Upon receipt of the amount transferred, the board ~~[of regents]~~ of regents shall allocate and deposit to the account of each participant the amount calculated for that participant under subsection (1)(b)(i). The amounts transferred under this subsection (1)(b)(ii) are statutorily appropriated, as provided in 17-7-502.

(c) The board of regents shall contribute an amount that, when added to the sum of the participant's contribution plus the contribution made under subsection (1)(b)(ii), is equal to 13% 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) Notwithstanding the supplemental contributions required under 19-20-604 and subsection (5) of this section, the sum of the participant's contributions made under subsection (1)(a), the state's contributions made under subsection (1)(b), and the employer's contributions made under subsection (1)(c) must remain at 13% 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, 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 43. Section 20-7-328, MCA, is amended to read:

"20-7-328. Legislative intent. (1) It is the intent of the legislature that the administration of the programs authorized by the Carl D. Perkins ~~Vocational and Applied Technology Education Act~~ Career and Technical Education Improvement Act of 2006 provide a seamless system of services to those people seeking to improve their ~~vocational~~ career and technical skills.

(2) It is the intent of the legislature that the superintendent of public instruction and the commissioner work cooperatively in providing that system of ~~vocational~~ career and technical services at both the secondary and

postsecondary levels.

(3) It is the intent of the legislature that the development of the state plan for ~~vocational~~ career and technical education be a cooperative effort of the superintendent of public instruction and the commissioner in consultation with teachers, students, and institutions or agencies that provide the services and activities."

Section 44. Section 20-7-329, MCA, is amended to read:

"20-7-329. Eligible agency for federal vocational education requirements. (1) The board of regents is the eligible agency for purposes of the ~~1984 federal~~ Carl D. Perkins ~~Vocational and Applied Technology Education Act~~ Career and Technical Education Improvement Act of 2006, as amended, which requires a state participating in programs under that act to designate a state board as the eligible agency responsible for administration or supervision of those programs.

(2) The board of regents shall contract with the superintendent of public instruction for the administration and supervision of K-12 career and ~~vocational/technical~~ technical education programs, services, and activities allowed by the ~~1984 federal~~ Carl D. Perkins ~~Vocational and Applied Technology Education Act~~ Career and Technical Education Improvement Act of 2006, as amended, and in concert with the state plan for ~~vocational~~ career and technical education required by the act. The board of regents may contract with other agencies for the administration and supervision of ~~vocational-technical~~ technical education programs, services, and activities that receive funding allowed by the ~~1984 federal~~ Carl D. Perkins ~~Vocational and Applied Technology Education Act~~ Career and Technical Education Improvement Act of 2006, as amended."

Section 45. Section 20-7-330, MCA, is amended to read:

"20-7-330. Creation of state plan committee -- meetings -- report. (1) The superintendent of public instruction and the commissioner shall each appoint three people from their respective advisory boards to serve on a committee to review and update the 5-year state plan for ~~vocational~~ career and technical education as required by 20 U.S.C. 2323. Two members appointed from each advisory board must be educators, and the remaining member appointed from each advisory board must be a representative of a business or community interest.

(2) At least four times a year, the board of regents shall meet with the superintendent of public instruction, teachers, students, labor organizations, businesses, and institutions or agencies involved in vocational

and technical education to:

(a) discuss the state plan;

(b) identify any issues or concerns with the administration of the Carl D. Perkins ~~Vocational and Applied Technology Education Act~~ Career and Technical Education Improvement Act of 2006 in Montana;

(c) identify the needs of ~~vocational-technical~~ technical students and programs in Montana and determine the best way to meet those needs; and

(d) if necessary, make changes in the administration and operation of the Carl D. Perkins ~~Vocational and Applied Technology Education Act~~ Career and Technical Education Improvement Act of 2006 in Montana.

(3) The board of regents shall report the results of the meetings required in subsection (2) to the legislature in accordance with the provisions of 5-11-210."

Section 46. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system, 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 as provided in subsection (2)(a). The district's or the cooperative'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 or the cooperative'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 or the cooperative'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 or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are

provided to the employee, are paid from the cooperative's interlocal cooperative fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204; and

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) 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.

(4) 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 20-9-631;~~

~~(v)~~(iv) 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)~~(v) 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 (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) 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.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) 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.

(8) 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.

(9) 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 (5)(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.

(10) The levy for a community college district may be applied only to property within the district.

(11) 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 47. Section 20-9-707, MCA, is amended to read:

"20-9-707. Agreement with accredited Montana job corps program. (1) The trustees of a school district may enter into an interlocal cooperative agreement for the ensuing school fiscal year under the provisions of Title 7, chapter 11, part 1, with a Montana job corps program accredited by the northwest ~~association of schools and colleges~~ commission on colleges and universities to provide educational or vocational services that are supplemental to the educational programs offered by the resident school district.

(2) A student who receives educational or vocational services at a Montana job corps program pursuant to an agreement authorized under subsection (1) must be enrolled, for purposes of calculating average number belonging, in a public school in the student's district of residence. Credits taken at the accredited Montana job corps program must be approved by the school district and meet the requirements for graduation at a school in the student's district of residence, must be taught by an instructor who has a current and appropriate Montana high school certification, and must be reported by the institution to the student's district of residence. Upon accumulating the necessary credits at either a school in the district of residence or at an accredited Montana job corps program pursuant to an interlocal cooperative agreement, a student must be allowed to graduate from the school in the student's district of residence.

(3) A school district that, pursuant to an interlocal cooperative agreement, allows an enrolled student to attend a Montana job corps program accredited as prescribed in subsection (1) is not responsible for payment of the student's transportation costs to the job corps program.

(4) A student attending a job corps program may not claim the job corps program's facility as the student's residence for the purposes of this section."

Section 48. Section 22-2-107, MCA, is amended to read:

"22-2-107. Gifts and donations. The council may acquire, accept, receive, dispose of, and administer in the name of the council any gifts, donations, properties, securities, bequests, and legacies that may be made to it. ~~Moneys~~ Money received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, ~~shall~~ must be deposited in the state special revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the national ~~foundation on~~ endowment for the arts."

Section 49. 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~~ must own in the applicant's name:

(a) a retail all-beverages license issued under 16-4-201, but the owner of a license transferred after July 1, 2007, to a quota area pursuant to a department-conducted lottery under 16-4-204(1)(a) is not eligible to offer gambling;

(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 50. Section 27-20-102, MCA, is amended to read:

"27-20-102. When and by whom receiver appointed. A receiver may be appointed by the court in which an action is pending ~~or by the judge thereof~~ when the action is:

(1) ~~in an action~~ by a vendor to vacate a fraudulent purchase of property~~,~~;

(2) by a creditor to subject any property or fund to ~~his~~ the creditor's claim~~,~~; ~~or~~

(3) between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or of any party whose right to or interest in the property or fund or the proceeds ~~thereof~~ of the property or fund is probable~~,~~ and ~~where~~ when it is shown that the property or fund is in danger of being lost, removed, or materially injured;

~~(2)~~(4) ~~in an action~~ by a mortgagee for the foreclosure of ~~his~~ the mortgagee's mortgage and sale of the mortgaged property~~, where~~ and when it ~~appears~~ is shown that the mortgaged property is in danger of being lost, removed, or materially injured or that the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt;

~~(3)~~(5) after judgment, to carry the judgment into effect;

~~(4)~~(6) after judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal; or

(7) ~~in~~ for proceedings in aid of execution, when an execution has been returned unsatisfied or when the judgment debtor refuses to apply ~~his~~ the judgment debtor's property in satisfaction of the judgment~~;~~

~~(5) in all other cases where, before February 1, 1864, receivers have been appointed by the usages of courts of equity~~."

Section 51. Section 30-10-324, MCA, is amended to read:

"30-10-324. Definitions. As used in 30-10-324 through 30-10-326, the following definitions apply:

(1) (a) "Compensation" means the receipt of money, a thing of value, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based upon the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based upon the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.

(3) (a) "Multilevel distribution company" means a person that:

(i) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors at different levels of distribution;

(ii) may recruit other participants in the company; and

(iii) is eligible for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.

(b) The term does not include an insurance producer, real estate broker, or salesperson or an investment adviser, investment adviser representative, broker-dealer, or salesperson, as defined in 30-10-103, operating in compliance with this chapter.

(4) "Participant" means a person involved in a sales plan or operation.

(5) "Person" means an individual, corporation, partnership, limited liability company, or other business entity.

(6) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

(b) A pyramid promotional scheme includes a Ponzi scheme, in which a person makes payments to

investors from money obtained from later investors, rather than from any profits or other income of an underlying or purported underlying business venture.

(c) A pyramid promotional scheme does not include a sales plan or operation that:

(i) subject to the provisions of subsection ~~(6)(b)(v)~~ (6)(c)(v), provides compensation to a participant based primarily upon the sale of goods or services by the participant, including goods or services used or consumed by the participant, and not primarily for obtaining the participation of other persons in the sales plan or operation and that provides compensation to the participant based upon the sale of goods or services by persons whose participation in the sales plan or operation has been obtained by the participant;

(ii) does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

(iii) is authorized to use a federally registered trademark or servicemark that identifies the company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation;

(iv) (A) provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation;

(B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation ~~plan~~; and

(C) provides that if the person cancels participation within the time provided and returns any required items, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and

(v) (A) ~~provides for,~~ upon the request of a participant deciding to terminate participation in the sales plan or operation, provides for the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection ~~(6)(b)(v)~~ (6)(c)(v) if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase."

Section 52. 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 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, 26 U.S.C. 401(a), 403(a), 403(b), 408, or 409."

Section 53. Section 33-1-111, MCA, is amended to read:

"33-1-111. Eligibility requirements of health insurance issuers. As a condition of doing business in the state of Montana, a health insurance issuer, a multiple employer welfare arrangement, a third-party administrator, a health maintenance organization, a pharmacy benefit manager, a health services corporation, or any other party that by statute, contract, or agreement is legally responsible for payment of a claim for a health care item or service shall:

(1) upon request, provide to the department of public health and human services eligibility information for individuals who are eligible for or receiving medicaid, including but not limited to:

(a) data to determine during what period the medicaid recipient or medicaid-eligible individual or the spouse or dependents of the recipient or eligible individual may be or may have been covered by any of the

entities listed in this section; and

(b) data regarding the nature of the coverage that is or was provided, including but not limited to the name, address, and identifying information of the entity providing coverage;

(2) respond to any inquiry from the department of public health and human services regarding a claim for payment for any health care item or service submitted not later than 3 years after the date the item or service was provided;

(3) accept the department of public health and human services' right of recovery and the assignment from the medicaid recipient to the department of public health and human services of any right of an individual or other entity to payment from any of the entities listed in this section for an item or service for which medicaid has paid; and

(4) agree not to deny a claim submitted by the department of public health and human services solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point of sale that is the basis of the claim if:

(a) the claim is submitted by the department of public health and human services within the 3-year period beginning on the date on which the service or item was provided; and

(b) any action by the department of public health and human services to enforce its rights with respect to the claim is commenced within 6 years after the department submitted the claim.

(5) This section may not be construed to:

(a) require that a third party pay any claim by the department ~~claim~~ of public health and human services for services or items that are not covered under the applicable health care plan;

(b) require that any third-party administrator, fiscal intermediary, or other contractor pay a claim by the department ~~claim~~ of public health and human services from its own funds unless the entity also bears the financial obligation for the claim under the applicable plan documents;

(c) impose any liability on an entity to pay claims that the entity does not otherwise bear; or

(d) negate any right of indemnification against a plan sponsor or other entity with ultimate liability for health care claims by a third-party administrator, fiscal intermediary, or other contractor that pays the claims."

Section 54. Section 37-17-102, MCA, is amended to read:

"37-17-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions

apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest ~~association of schools and colleges~~ commission on colleges and universities.

(2) "Board" means the board of psychologists provided for in 2-15-1741.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

(5) A person represents to the public that the person is a "psychologist" when the person uses a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services ~~defined~~ described in subsection (4) to individuals, groups, corporations, or the public, whether or not the person does so for compensation or fee."

Section 55. Section 39-51-403, MCA, is amended to read:

"39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits -- exception. (1) Money may be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to sections 903 and 904 of the Social Security Act, ~~(~~42 U.S.C. 1103 and 1104~~)~~, as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter. Money withheld by the department from a benefits payment at the request of an individual or in accordance with the department's rules pertaining to

deductions and withholding for federal income tax purposes pursuant to 39-51-2207 or money withheld for repayment of an overissuance of food stamp ~~coupons~~ benefits pursuant to 39-51-2208 must be considered benefits for the purposes of this subsection.

(2) The department shall from time to time requisition from the unemployment trust fund amounts, not exceeding the amounts in this state in the fund, ~~as~~ that it considers necessary for the payment of benefits for a reasonable future period. Upon receipt of a requisition, the treasurer shall deposit the money in the benefit account and shall issue warrants for the payment of benefits solely from the benefit account.

(3) Expenditures of money in the benefit account and refunds from the clearing account are not subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(4) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned must be deducted from estimates for and may be used for the payment of benefits during succeeding periods or, in the discretion of the department, must be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in 39-51-402."

Section 56. Section 39-51-503, MCA, is amended to read:

"39-51-503. Agreements with railroad retirement board. The department is authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance, and use of employment service facilities and to make available to the railroad retirement board the records of the department relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act, ~~(~~45 U.S.C. 351, et seq.~~)~~, together with employee wage records and other data that the railroad retirement board considers necessary or desirable for the administration of the Railroad Unemployment Insurance Act. Any money received by the department from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance, and use of employment service facilities must be paid into and credited to the proper division of the unemployment insurance administration ~~fund~~ account set up and established under 39-51-406 and 39-51-407."

Section 57. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit -- authorizing transfer of money. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $1.25 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

(4) As used in this section, "adequately funded" means the present value of:

(a) the total cost of future benefits remaining to be paid; and

(b) the cost of administering the claims.

~~(5) Based on audited financial statements adjusted for unrealized gains and losses for each fiscal year, funds in excess of the adequate funding amount established in subsection (4) must be transferred as follows:~~

~~(a) Prior to June 30, 2003:~~

~~(i) the amount of $1.9 million must be transferred to the general fund to be transferred to the state library equipment account and appropriated to the university system and the department of public health and human services;~~

~~(ii) the amount of $2.1 million must be transferred to the school flexibility fund, provided for in 20-9-543; and~~

~~(iii) the amount of $9,178,000 must be transferred to the general fund.~~

~~(b) Prior to June 30, 2004, an amount up to $4.3 million in available excess funds from fiscal year 2003~~

~~must be transferred to the general fund.~~

~~(c) Prior to June 30, 2005, an amount up to $3.78 million in available excess funds from fiscal year 2004 must be transferred to the general fund.~~

~~(d)~~(5) ~~In the fiscal years 2004 and 2005, any remaining amount, and in subsequent fiscal years, an~~ An amount of funds in excess of the adequate funding amount established in subsection (4), based on audited financial statements adjusted for unrealized gains and losses, must be transferred to the general fund.

(6) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims for injuries resulting from accidents that occurred before July 1, 1990, must be transferred from the general fund to the account provided for in 39-71-2321.

(7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid."

Section 58. Section 39-73-104, MCA, is amended to read:

"39-73-104. Eligibility requirements for benefits. Payment must be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, that results in the person's total disability so as to render it impossible for the person to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which the person would receive a payment under this chapter, compensation under ~~39-71-115~~ 39-71-715 equal to the sum of $350."

Section 59. Section 41-2-103, MCA, is amended to read:

"41-2-103. Definitions. As used in this part, the following definitions apply:

(1) "Agriculture" means:

(a) all aspects of farming, including the cultivation and tillage of the soil;

(b) (i) dairying; and

(ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act, ~~(~~12 U.S.C. 1141j(g)~~)~~;

(c) the raising of livestock, bees, fur-bearing animals, or poultry; and

(d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Domestic service" means an occasional, irregular, or incidental nonhazardous occupational activity related to and conducted in or around a private residence, including but not limited to babysitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.

(4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including but not limited to occupations as servant, agent, subagent, or independent contractor.

(b) The term does not include casual, community service, nonrevenue raising, uncompensated activities.

(5) "Employer" includes an individual, partnership, association, corporation, business trust, person, or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(6) "Minor" means an individual under 18 years of age, except for an individual who:

(a) has received a high school diploma or has received a passing score on the general ~~education~~ educational development examination; or

(b) is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program.

(7) "Occupation" means:

(a) an occupation, service, trade, business, or industry in which employees are employed;

(b) any branch or group of industries in which employees are employed; or

(c) any employment or class of employment in which employees are employed."

Section 60. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken

under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (7) and (8), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by ~~42 U.S.C. 6042(a)(2)(B)~~ 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a ~~youth~~ juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(7) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(8) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (7) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(9) This section is not intended to affect the confidentiality of criminal court records, records of law

enforcement agencies, or medical records covered by state or federal disclosure limitations.

(10) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 61. 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 pool" means funds allocated 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) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given.

(b) The term 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 and who has violated any condition of

probation.

(12) "Department" means the department of corrections provided for in 2-15-2301.

(13) (a) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1513(1)(b) or who are under parole supervision.

(b) Department records do not include information provided by the department to the department of public health and human services' management information system or information maintained by the youth court through the office of court administrator.

(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) (a) "Formal youth court records" means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(20) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(21) "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.

(22) "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.

(23) (a) "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.

(b) The term does not include a jail.

(24) (a) "Informal youth court records" means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(25) (a) "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.

(b) The term does not include a colocated juvenile detention facility that complies with 28 CFR, part 31.

(26) "Judge", when used without further qualification, means the judge of the youth court.

(27) "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.

(28) "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.

(29) (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.

(30) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(31) (a) "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.

(b) The term does not include shelter care or emergency placement of less than 45 days.

(32) (a) "Parent" means the natural or adoptive parent.

(b) The term does not include:

(i) a person whose parental rights have been judicially terminated; or

(ii) 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.

(33) "Probable cause hearing" means the hearing provided for in 41-5-332.

(34) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(35) "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.

(36) "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.

(37) "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.

(38) "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.

(39) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(40) "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.

(41) "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.

(42) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(43) "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.

(44) "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 (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(45) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

(47) "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.

(48) "Youth care facility" has the meaning provided in 52-2-602.

(49) "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, juvenile probation officers, and assessment officers.

(50) "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 colocated 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.

(51) "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:

(i) violates any Montana municipal or state law regarding alcoholic beverages; or

(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

(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 62. Section 41-5-322, MCA, is amended to read:

"41-5-322. Release from custody -- detention -- shelter care. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a responsible person, the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the juvenile probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall notify the juvenile probation officer immediately and shall, as soon as practicable, provide the juvenile probation officer with a written report of the peace officer's reasons for holding the youth in detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in a place of detention, as provided in 41-5-348, that is approved by the youth court.

(3) If the peace officer believes that the youth must be sheltered, the peace officer shall notify the juvenile probation officer immediately and shall provide a written report of the peace officer's reasons for placing the youth

in shelter care. If the youth is then held, the youth must be placed in a shelter care facility approved by the youth court."

Section 63. Section 41-5-331, MCA, is amended to read:

"41-5-331. Rights of youth taken into custody -- questioning -- waiver of rights. (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the following requirements must be met:

(a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.

(b) The investigating officer, juvenile probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth may waive the rights listed in subsection (1) under the following situations:

(a) when the youth is 16 years of age or older, the youth may make an effective waiver;

(b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree, they may make an effective waiver; or

(c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel."

Section 64. Section 41-5-1201, MCA, is amended to read:

"41-5-1201. Preliminary inquiry -- referral of youth in need of care. (1) Whenever the court receives information from an agency or person, including a parent or guardian of a youth, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of intervention or that the youth is subject to a court order or consent order and has violated the terms of an order, a juvenile probation officer or an assessment officer shall make a preliminary inquiry into the matter.

(2) If the juvenile probation officer or assessment officer determines that the facts indicate that the youth is a youth in need of care, as defined in 41-3-102, the matter must be immediately referred to the department of

public health and human services."

Section 65. Section 41-5-1202, MCA, is amended to read:

"41-5-1202. Preliminary inquiry -- procedure -- youth assessment. (1) In conducting a preliminary inquiry under 41-5-1201, the juvenile probation officer or assessment officer shall:

(a) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention, a youth assessment center, or shelter care, whether detention, placement in a youth assessment center, or shelter care should be continued or modified based upon criteria set forth in 41-5-341 through 41-5-343.

(2) In conducting a preliminary inquiry, the juvenile probation officer or assessment officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency;

(d) perform a youth assessment pursuant to 41-5-1203."

Section 66. Section 41-5-1203, MCA, is amended to read:

"41-5-1203. Preliminary inquiry -- youth assessment. (1) The juvenile probation officer or assessment officer may perform a youth assessment if:

(a) a youth has been referred to the youth court as an alleged youth in need of intervention with a minimum of two misdemeanor offenses or three offenses in the past year that would not be offenses if the youth were an adult;

(b) the youth is alleged to be a youth in need of intervention or a delinquent youth and the youth or the youth's parents or guardian requests the youth assessment and both the youth and the parents or guardian are willing to cooperate with the assessment process; or

(c) the circumstances surrounding a youth who has committed an act that would be a felony if committed by an adult indicate the need for a youth assessment and the safety of the community has been considered in

determining where the youth assessment is conducted.

(2) A youth assessment:

(a) must be a multidisciplinary effort that may include, but is not limited to a chemical dependency evaluation of the youth, an educational assessment of the youth, an evaluation to determine if the youth has mental health needs, or an assessment of the need for any family-based services or other services provided by the department of public health and human services or other state and local agencies. The education component of the youth assessment is intended to address attendance, behavior, and performance issues of the youth. The education component is not intended to interfere with the right to attend a nonpublic or home school that complies with 20-5-109.

(b) must include a summary of the family's strengths and needs as they relate to addressing the youth's behavior;

(c) may occur in a youth's home, with or without electronic monitoring, or pursuant to 41-5-343 in a youth assessment center licensed by the department of public health and human services or in any other entity licensed by the department of public health and human services. The county shall provide adequate security in other licensed entities through provision of additional staff or electronic monitoring. The staff provided by the county must meet licensing requirements applicable to the licensed entity in which the youth is being held.

(3) The assessment officer arranging the youth assessment shall work with the parent or guardian of the youth to coordinate the performance of the various parts of the assessment with any providers that may already be working with the family or providers that are chosen by the family to the extent possible to meet the goals of the Youth Court Act."

Section 67. Section 41-5-1204, MCA, is amended to read:

"41-5-1204. Preliminary inquiry -- determinations -- release. Once relevant information is secured after a preliminary inquiry under 41-5-1201, the juvenile probation officer or assessment officer shall:

(1) determine whether the interest of the public or the youth requires that further action be taken;

(2) terminate the inquiry upon the determination that no further action be taken; and

(3) release the youth immediately upon the determination that the filing of a petition is not authorized."

Section 68. Section 41-5-1205, MCA, is amended to read:

"41-5-1205. Preliminary inquiry -- dispositions available to juvenile probation officer. Upon determining that further action is required after a preliminary inquiry under 41-5-1201, the juvenile probation officer or assessment officer may:

(1) arrange informal disposition as provided in 41-5-1301; or

(2) refer the matter to the county attorney for filing a petition in youth court charging the youth to be a delinquent youth or a youth in need of intervention or for filing an information in the district court as provided in 41-5-206."

Section 69. Section 41-5-1301, MCA, is amended to read:

"41-5-1301. Informal disposition. After a preliminary inquiry under 41-5-1201, the juvenile probation officer or assessment officer upon determining that further action is required and that referral to the county attorney is not required may:

(1) provide counseling, refer the youth and the youth's family to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention; or

(2) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-1302 through 41-5-1304 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the juvenile probation officer or assessment officer proceeds no further unless authorized by the county attorney."

Section 70. Section 41-5-1302, MCA, is amended to read:

"41-5-1302. Consent adjustment without petition. (1) Before referring the matter to the county attorney and subject to the limitations in subsection (3), the juvenile probation officer or assessment officer may enter into a consent adjustment and give counsel and advice to the youth, the youth's family, and other interested parties if it appears that:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child, the family, and the public; and

(c) the youth may be a youth in need of intervention and the juvenile probation officer or assessment

officer believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against a youth must conform to the following procedures:

(a) Every consent adjustment must be reduced to writing and signed by the youth and the youth's parents or the person having legal custody of the youth.

(b) If the juvenile probation officer or assessment officer believes that the youth is a youth in need of intervention, the juvenile probation officer or assessment officer shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and that the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

(3) A consent adjustment without petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if:

(a) the youth has admitted commission of or has been adjudicated or sentenced for a prior offense that would be a felony if committed by an adult;

(b) the second or subsequent offense would be a felony if committed by an adult and was committed within 3 years of a prior offense; or

(c) the second or subsequent offense would be a misdemeanor if committed by an adult and was committed within 3 years of a prior offense, other than a felony, unless the juvenile probation officer notifies the youth court and obtains written approval from the county attorney and the youth court judge.

(4) For purposes of subsection (3), related offenses committed by a youth during the same 24-hour period must be considered a single offense."

Section 71. Section 41-5-1304, MCA, is amended to read:

"41-5-1304. Disposition permitted under consent adjustment. (1) The following dispositions may be imposed by consent adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 52-2-602 and pursuant to a recommendation made under 41-5-121;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth pursuant to a recommendation made under 41-5-121;

(d) restitution, as provided in 41-5-1521, upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;

(f) confiscation of the youth's driver's license, if the youth has one, by the juvenile probation officer for a specified period of time, not to exceed 90 days. The juvenile probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The juvenile probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The juvenile probation officer may, in the juvenile probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy~~;~~.

(g) a requirement that the youth receive counseling services;

(h) placement in a youth assessment center for up to 10 days;

(i) placement of the youth in detention for up to 3 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter;

(j) a requirement that the youth perform community service;

(k) a requirement that the youth participate in victim-offender mediation;

(l) an agreement that the youth pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

(m) an agreement that the youth pay a contribution covering all or a part of the costs of a victim's counseling or restitution for damages that result from the offense for which the youth is disposed;

(n) any other condition ordered by the court to accomplish the goals of the consent adjustment, including but not limited to mediation or youth assessment. Before ordering youth assessment, the court shall provide the family with an estimate of the cost of youth assessment, and the court shall take into consideration the financial resources of the family before ordering parental or guardian contribution for the costs of youth assessment.

(2) If the youth violates a parole agreement as provided for in 52-5-126, the youth must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under a consent adjustment.

(3) If the youth is placed in substitute care, an assessment placement, or detention requiring payment by any state department or local government agency, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, supervision, care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care."

Section 72. Section 41-5-1401, MCA, is amended to read:

"41-5-1401. Petition -- county attorney -- procedure -- release from custody. (1) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of intervention. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(2) A petition charging a youth who is held in detention or a youth assessment center must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

(3) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the juvenile probation officer or assessment officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the juvenile probation officer or assessment officer, and make the final decision as to whether a petition is filed."

Section 73. Section 41-5-1432, MCA, is amended to read:

"41-5-1432. Enforcement of restitution orders. If the court orders payment of restitution and the youth fails to pay the restitution in accordance with the payment schedule or structure established by the court or juvenile probation officer, the youth's juvenile probation officer may, on the officer's own motion or at the request of the victim, file a petition for violation of probation or ask the court to hold a hearing to determine whether the conditions of probation should be changed. The juvenile probation officer shall ask for a hearing if the restitution has not been paid prior to 60 days before the term of probation expires. The court shall schedule and hold the hearing before the youth's term of probation expires."

Section 74. Section 41-5-1501, MCA, is amended to read:

"41-5-1501. Consent decree with petition. (1) (a) Subject to the provisions of subsection (2), after the filing of a petition under 41-5-1402 and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the youth under supervision under this section is known as a "consent decree". Except as provided in subsection (1)(b), the procedures used and dispositions permitted under this section must conform to the procedures and dispositions specified in 41-5-1302 through 41-5-1304 relating to consent adjustments without petition and the responsibility of the youth's parents or guardians to pay a contribution for the costs of placement in substitute care.

(b) A youth may be placed in detention for up to 10 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter.

(2) A consent decree under this section may not be used by the court unless the youth admits guilt for a charge of an offense set forth in the petition and accepts responsibility for the youth's actions.

(3) If the youth or the youth's counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(4) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging that the youth is a delinquent youth or a youth in need of intervention is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition must be continued to conclusion

as if the consent decree had never been entered.

(5) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition must be dismissed with prejudice. This subsection does not preclude a civil suit against the youth for damages arising from the youth's conduct.

(6) If the terms of the consent decree extend for a period in excess of 6 months, the juvenile probation officer shall at the end of each 6-month period submit a report that must be reviewed by the court.

(7) A consent decree with petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or subsequent offense if that offense would be a misdemeanor if committed by an adult unless it is recommended by the county attorney and accepted by the youth court judge."

Section 75. Section 41-5-1511, MCA, is amended to read:

"41-5-1511. Dispositional hearing -- contributions by parents or guardians for expenses. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of intervention, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians to pay a contribution for the cost of the adjudication, disposition, supervision, care, commitment, and treatment of the youth as required in 41-5-1525, including the costs of necessary medical, dental, and other health care.

(2) Before conducting the dispositional hearing, the court shall direct that a youth assessment or predisposition report be made in writing by a juvenile probation officer or an assessment officer concerning the youth, the youth's family, the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition of the case, including a statement by the victim or the victim's family. The youth court may have the youth examined, and the results of the examination must be made available to the court as part of the youth assessment or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of the examination must be included in the youth assessment or predisposition report. The youth or the youth's parents, guardian, or counsel has the right to subpoena all persons who have prepared any portion of the youth assessment or predisposition report and has the right to cross-examine the parties at the dispositional hearing.

(3) Defense counsel must be furnished with a copy of the youth assessment or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing must be conducted in the manner set forth in 41-5-1502(5) through (7). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth, the victim, and the public. The evidence must include but is not limited to the youth assessment and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, the youth's parents or guardian, or the public may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation."

Section 76. Section 41-5-1512, MCA, is amended to read:

"41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments. (1) If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

(b) place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee.

(c) commit the youth to the youth court for the purposes of placement in a private, out-of-home facility subject to the conditions in 41-5-1522. In an order committing a youth to the youth court, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

(d) order restitution for damages that result from the offense for which the youth is disposed by the youth or by the person who contributed to the delinquency of the youth;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community;

(j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

(l) order confiscation of the youth's driver's license, if the youth has one, by the juvenile probation officer for a specified period of time, not to exceed 90 days. The juvenile probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The juvenile probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The juvenile probation officer may, in the juvenile probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth and may not be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

(m) order the youth to pay a contribution covering all or a part of the costs for adjudication, disposition, and attorney fees for the costs of prosecuting or defending the youth and costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

(n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

(o) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

(i) The court may not order placement for evaluation at a youth correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated

a consent adjustment.

(ii) The placement for evaluation must be on a space-available basis. Except as provided in subsection (1)(o)(iii), the court shall pay the cost of the placement for evaluation from its judicial district's allocation provided for in 41-5-130 or 41-5-2012.

(iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.

(p) order placement of a youth in a youth assessment center for up to 10 days;

(q) order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) 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 annual allocation established for that district under 41-5-130 without approval from the cost containment review panel."

Section 77. Section 41-5-1701, MCA, is amended to read:

"41-5-1701. Employment of juvenile probation officers and youth court staff. All juvenile probation officers and youth court staff 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 78. Section 41-5-1703, MCA, is amended to read:

"41-5-1703. Powers and duties of juvenile probation officers. (1) A juvenile 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 juvenile 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 juvenile probation officer does not have power to make arrests or to perform any other law enforcement functions in carrying out the juvenile probation officer's duties except that a juvenile 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 juvenile probation officer may not be performed by a person serving as a law enforcement officer."

Section 79. Section 41-5-1706, MCA, is amended to read:

"41-5-1706. Juvenile probation officer training. (1) The office of court administrator may conduct a 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers.

(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 office of court administrator.

(3) Each chief juvenile probation officer and deputy juvenile probation officer shall obtain 16 hours a year of training in subjects relating to the powers and duties of juvenile probation officers."

Section 80. Section 44-1-303, MCA, is amended to read:

"44-1-303. Duties. The chief, with the approval of the attorney general and within the limits of any appropriation made available for such purposes, shall:

(1) designate the authority and responsibility in each rank, grade, and position;

(2) formulate standards, policies, and qualifications in the selection of recruit patrol officers;

(3) prescribe the official uniform of the Montana highway patrol;

(4) station employees in ~~such~~ localities as ~~he shall deem~~ the chief determines to be advisable for the enforcement of the traffic laws of this state;

(5) charge against each employee the value of property of the state lost or destroyed through the

carelessness or neglect of ~~such~~ that employee;

(6) discharge, demote, or temporarily suspend after hearing, as provided in parts 7 and 8 of this chapter, any patrol officer of the department;

(7) have purchased or otherwise acquired by the purchasing department of the state motor ~~equipment~~ vehicles and all other equipment and commodities ~~deemed by him~~ considered by the chief to be essential to the efficient operation of the Montana highway patrol."

Section 81. Section 45-6-312, MCA, is amended to read:

"45-6-312. Unauthorized acquisition or transfer of food stamps. (1) A person commits the offense of unauthorized acquisition or transfer of food ~~stamps~~ stamp benefits if the person knowingly:

(a) acquires, purchases, possesses, or uses any food stamp ~~or coupon~~ benefit that the person is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp ~~or coupon~~ benefit to another person not entitled to receive or use it.

(2) A person convicted of an offense under this section shall be fined not more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both. A person convicted of an offense under this section, which offense is part of a common scheme or in which the value of the food ~~stamps~~ stamp benefits exceeds $1,000, shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(3) As used in this section, "food stamp ~~or coupon~~ benefits" means any stamp, coupon, or type of certification provided for the purchase of eligible food pursuant to the Food Stamp Act of 1977, 7 U.S.C. 2011 through 2029, or any similar public assistance program."

Section 82. Section 46-23-508, MCA, is amended to read:

"46-23-508. Dissemination of information. (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) the department of justice or the registration agency shall release any offender registration information

that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

(ii) if an offender was given a level 1 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; and

(D) the offenses for which the offender is required to register under this part;

(iii) if an offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any motor vehicle owned or operated by the offender;

(F) the offenses for which the offender is required to register under this part; and

(G) any conditions imposed by the court upon the offender for the safety of the public; and

(iv) if an offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a registration agency may, in its sole

discretion, request an in camera review by a district court of the determination by the registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a registration agency without the permission of the victim.

(3) Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 83. 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) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ~~ambulatory surgical centers~~ outpatient centers for surgical services upon their requests and grants accreditation status to the ~~ambulatory surgical centers~~ outpatient centers for surgical services that it finds meet its standards and requirements.

(3) "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.

(4) "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.

(5) (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 (5), 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.

(6) "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.

(7) "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.

(8) "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.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "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.

(11) "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.

(12) "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.

(13) "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.

(14) "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.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "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.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "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.

(19) "Department" means the department of public health and human services provided for in 2-15-2201.

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision

of the state, or an agency of a political subdivision.

(23) (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 includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, 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 licensed addiction counselors.

(24) "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.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "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.

(27) "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.

(28) (a) "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. Except as otherwise provided by law, 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:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(29) "Infirmary" 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 "infirmary--A" provides outpatient and inpatient care;

(b) an "infirmary--B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(32) "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.

(33) "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.

(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the

department of labor and industry.

(35) (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.

(36) "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, 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.

(37) "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.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "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.

(42) "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.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(47) "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.

(48) "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.

(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(51) "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.

(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(53) "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.

(54) "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.

(55) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis, care, or treatment of one or more of the following categories:

(i) patients with a cardiac condition;

(ii) patients with an orthopedic condition;

(iii) patients undergoing a surgical procedure; or

(iv) patients treated for cancer-related diseases and receiving oncology services.

(b) For purposes of this subsection (55), a specialty hospital may provide other services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law if the care encompasses 35% or less of the hospital services.

(c) The term "specialty hospital" does not include:

(i) psychiatric hospitals;

(ii) rehabilitation hospitals;

(iii) children's hospitals;

(iv) long-term care hospitals; or

(v) critical access hospitals.

(56) "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.

(57) "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 84. Section 50-6-503, MCA, is amended to read:

"50-6-503. Rulemaking. (1) The department shall adopt rules specifying the following:

(a) the contents of the written notice required by ~~50-6-502(7)~~ 50-6-502(6);

(b) reporting requirements for each use of an AED;

(c) the contents of a plan prepared in accordance with 50-6-502 and requirements applicable to the subject matter of the plan;

(d) training requirements in cardiopulmonary resuscitation and AED use for any individual authorized by an AED program plan to use an AED;

(e) guidelines for medical oversight of an AED program;

(f) minimum requirements for a medical protocol for use of an AED;

(g) performance requirements for an AED in order for the AED to be used in an AED program; and

(h) a list of the AED training programs approved by the department.

(2) The department may not adopt rules for any purpose other than those in subsection (1)."

Section 85. Section 50-19-101, MCA, is amended to read:

"50-19-101. 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) "Health care provider" means a licensed physician, a physician assistant, a registered nurse, an advanced practice registered nurse, a naturopathic physician, or a direct-entry midwife practicing within the scope of the provider's professional license.

(3) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation--O, A, B, AB) and RH (Dd) type, and a screening for hepatitis B surface antigen, approved by the department."

Section 86. Section 52-3-813, MCA, is amended to read:

"52-3-813. Confidentiality. (1) The case records of the department, its local affiliate, the county attorney, and the court concerning actions taken under this part and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section. For the purposes of this section, the term "case records" includes

records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a person with a developmental disability who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the person with a developmental disability if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the person with a developmental disability who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case;

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability; or

(iii) the person is carrying out background screening or ~~employment-~~ employment-related or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with an older person or a person with a developmental disability through employment or volunteer activities if the disclosure is limited to information that indicates a risk to an older person or a person with a developmental disability posed by the employee or volunteer, as determined by the department. A request

for information under this subsection must be made in writing.

(g) an employee of the department if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, ~~42 U.S.C. 6042, and~~ 42 U.S.C. 10805, and 42 U.S.C. 15043;

(j) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and does not violate the privacy rights of the older person, person with a developmental disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;

(k) a coroner or medical examiner who is determining the cause of death of an older person or a person with a developmental disability;

(l) a person about whom a report has been made and that person's attorney with respect to relevant records pertaining to that person only without disclosing the identity of the person who made the report or any other person whose safety might be endangered through disclosure;

(m) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability; and

(n) a department, agency, or organization, including a federal agency, military reservation, or tribal organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability and that meets the disclosure criteria contained in this section.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court that has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a person with a developmental disability is the holder of a license, permit, or certificate issued by the department of labor and industry under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 87. Section 53-6-1201, MCA, is amended to read:

"53-6-1201. Special revenue fund -- health and medicaid initiatives. (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c);

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and

(c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

(e) funding new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and

(g) providing a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.

~~(4) (a) Except for $1 million appropriated for the startup costs of 53-6-1004 and 53-6-1005, the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that $25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.~~

~~(b)~~(4) (a) On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

~~(c)~~(b) Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section."

Section 88. Section 53-19-309, MCA, is amended to read:

"53-19-309. Gifts and grants. The committee may accept contributions, gifts, and grants, in money or otherwise, to the program established in 53-19-306. Monetary contributions, gifts, and grants must be deposited in the ~~fund~~ account provided for in 53-19-310."

Section 89. Section 53-20-125, MCA, is amended to read:

"53-20-125. Outcome of screening -- recommendation for commitment to residential facility or imposition of community treatment plan -- hearing. (1) A court may commit a person to a residential facility or impose a community treatment plan only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan by the residential facility screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) After the screening required by 53-20-133, the residential facility screening team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent. The residential facility screening team shall provide to the court, the county attorney, the respondent's attorney, and any other party requesting it the social and placement information that the team relied upon in making its determination.

(3) Notice of the determination of the residential facility screening team must be mailed or delivered to:

(a) the respondent;

(b) the respondent's parents, guardian, or next of kin, if known;

(c) the responsible person;

(d) the respondent's advocate, if any;

(e) the county attorney;

(f) the residential facility;

(g) the attorney for the respondent, if any; and

(h) the attorney for the parents or guardian, if any.

(4) The respondent, the respondent's parents or guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team. The request for a hearing must be made in writing within 15 days of service of the report.

(5) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (4).

(6) The hearing must be held before the court without jury. The rules of civil procedure apply.

(7) Upon receiving the report of the residential facility screening team and after a hearing, if one is

requested, the court shall enter findings of fact and take one of the following actions:

(a) If both the residential facility screening team and the court find that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, the court shall order the respondent committed to a residential facility for an extended course of treatment and habilitation.

(b) If both the residential facility screening team and the court find that the respondent is seriously developmentally disabled but either the residential facility screening team or the court finds that a less restrictive community treatment plan has been proposed, the court may impose a community treatment plan that meets the conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the parties or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4), it may order the respondent committed to a residential facility. The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions of 53-20-133(4)(c) and (4)(d).

(c) If either the residential facility screening team or the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, the court shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in voluntary community-based services according to 53-20-209.

(d) If either the residential facility screening team or the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, the court shall dismiss the petition.

(8) (a) If the residential facility screening team recommends commitment to a residential facility or imposition of a community treatment plan and none of the parties notified of the recommendation request a hearing within 15 days of service of the screening team's report, the court may:

(i) issue an order committing the respondent to the residential facility for an extended period of treatment and habilitation;

(ii) issue an order imposing a community treatment plan that the court finds meets the conditions set forth in 53-20-133(4); or

(iii) initiate its own inquiry as to whether an order should be granted.

(b) The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions in 53-20-133(4)(c) and (4)(d).

(9) The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

(10) A court order entered in a proceeding under this part must be provided to the residential facility screening team."

Section 90. Section 53-20-128, MCA, is amended to read:

"53-20-128. Recommitment -- extension of community treatment plan. (1) The qualified mental retardation professional responsible for a resident's habilitation or the case manager responsible for habilitation of a person under a community treatment plan may request that the county attorney file a petition for recommitment or extension of the order imposing the community treatment plan.

(2) A petition for recommitment or extension must be filed with the district court before the end of the current period of commitment or the expiration of the order imposing the current community treatment plan.

(3) A petition for recommitment or extension of a community treatment plan must be accompanied by a written report containing the recommendation of the qualified mental retardation professional or case manager and a summary of the current habilitation plan or community treatment plan for the respondent.

(4) The petition must be reviewed in accordance with 53-20-133 by the residential facility screening team.

(5) Copies of the petition for recommitment and the report of the qualified mental retardation professional or case manager must be sent to:

(a) the court that issued the current order;

(b) the residential facility screening team;

(c) the resident;

(d) the resident's parents or guardian or next of kin, if any;

(e) the attorney who most recently represented the resident, if any;

(f) the responsible person appointed by the court, if any; and

(g) the resident's advocate, if any.

(6) The provisions of 53-20-125 apply to a petition for recommitment or extension of an order imposing a community treatment plan.

(7) If either the court or the residential facility screening team finds that the respondent has been placed voluntarily in community-based services or that the need for developmental disabilities services no longer exists,

the court shall dismiss the petition.

(8) The court may not order recommitment to a residential facility that does not have an individualized habilitation plan for the resident.

(9) The court may not extend an order imposing a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions set forth in 53-20-133(4)(c) and (4)(d)."

Section 91. Section 53-20-133, MCA, is amended to read:

"53-20-133. Residential facility screening team -- referral by court -- membership -- rules. (1) When the district court receives a petition for commitment to a residential facility or for imposition of a community treatment plan under this part, the court, prior to proceeding, shall refer the respondent to the residential facility screening team for screening to determine whether commitment to a residential facility or imposition of a community treatment plan is appropriate for the respondent.

(2) A court may not commit a respondent to a residential facility or impose a community treatment plan under 53-20-125, 53-20-128, or 53-20-129 unless the residential facility screening team determines that commitment to a residential facility or imposition of a community treatment plan is appropriate for the respondent.

(3) The residential facility screening team may not determine that commitment to a residential facility or imposition of a community treatment plan is appropriate on an extended basis unless the residential facility screening team determines that the respondent is seriously developmentally disabled.

(4) The residential facility screening team may not recommend ~~commitment to~~ imposition of a community treatment plan unless it finds that the proposed plan:

(a) provides adequate assurances of safety from the consequences of the behaviors of the respondent for both the respondent and the community;

(b) provides effective habilitation services for the respondent's developmental disability;

(c) is funded from public or private sources that are identified, committed, and available to pay for all of the proposed services to the respondent; and

(d) ensures services from identified, qualified providers that are committed and available to provide all of the proposed services to the respondent.

(5) For purposes of this part, the department of public health and human services shall adopt rules

providing for the membership and terms of the members of the residential facility screening team and setting forth the criteria and procedures to govern the determinations made by the residential facility screening team."

Section 92. Section 61-4-128, MCA, is amended to read:

"61-4-128. Common standards -- dealer plates -- demonstrator plates -- identification cards -- fees. (1) (a) Dealer, demonstrator, and courtesy license plates authorized under this part must be designed by the department in a manner that is similar to standard license plates furnished under 61-3-332, but the word "dealer", "demonstrator", or "courtesy" must be included in the plate design.

(b) Dealer, demonstrator, and courtesy license plates must be numbered in a manner that is readily distinguishable from other plate styles issued by the department. The numbering system for dealer plates must contain the distinctive license number assigned by the department to a dealer and a number or alphanumeric identification mark that relates to the assignment of sets of dealer plates to a dealer. The numbering system for demonstrator plates may be sequential and unrelated to the number of demonstrator plates or the distinctive license number assigned to a dealer, wholesaler, or auto auction.

(c) Dealer, demonstrator, and courtesy plates issued under this part must be replaced on the same cycle that is required for standard license plates under 61-3-332.

(d) Except as provided in 61-4-124, dealer, demonstrator, and courtesy plates must display a registration decal, affixed as prescribed by the department, for the calendar year for which use of the plate or plates is authorized under this part.

(2) (a) Identification cards must be designed by the department and furnished to dealers to authorize the demonstration of a motorboat or personal watercraft, a snowmobile, or an off-highway vehicle by a dealer licensed under this part or a customer of a dealer licensed under this part. Each identification card must include the dealer's name and address and the license number assigned by the department to the dealer and must designate the type of power sports vehicle for which its use is authorized, such as a motorboat or personal watercraft, snowmobile, or off-highway vehicle.

(b) The department may use the same numbering system for identification cards as it uses for demonstrator plates.

(3) (a) Upon issuance of a license to a dealer whose business includes the sale of motorboats or personal watercraft, snowmobiles, or off-highway vehicles, the department shall furnish identification cards to a

dealer as follows:

(i) for a dealer who sells motorboats or personal watercraft, one identification card;

(ii) for a dealer who sells snowmobiles, two identification cards; and

(iii) for a dealer who sells off-highway vehicles, two identification cards.

(b) The dealer may obtain additional identification cards for $2, as needed, and upon submitting justification for the need to the department.

(4) (a) An identification card issued to a dealer who sells motorboats or personal watercraft may be displayed on a dealer's motorboat or personal watercraft while the motorboat or personal watercraft is operating for a purpose related to the buying, selling, exchanging, or performance testing of the motorboat or personal watercraft by the dealer, manufacturer, or potential buyer.

(b) An identification card issued to a dealer who sells snowmobiles must be carried by the dealer when demonstrating the dealer's snowmobiles or by the dealer's customer.

(c) An identification card issued to a dealer who sells off-highway vehicles must be carried by the dealer when the dealer's off-highway vehicles are being demonstrated for sale purposes or by the dealer's customer.

(5) (a) All dealer, demonstrator, and courtesy plates and identification cards issued under this part expire on December 31 of the year of issue and must be renewed annually.

(b) A dealer, wholesaler, or auto auction that files the annual report required under 61-4-120, 61-4-124, or 61-4-125 on or before December 31 of the calendar year may display or use dealer or demonstrator plates and identification cards assigned for the prior calendar year through the last day of February of the following year."

Section 93. Section 69-8-419, MCA, is amended to read:

"69-8-419. Electricity supply resource planning and procurement -- duties of public utility -- objectives -- commission rules. (1) The public utility shall:

(a) plan for future electricity supply resource needs;

(b) manage a portfolio of electricity supply resources; and

(c) procure new electricity supply resources when needed.

(2) The public utility shall pursue the following objectives in fulfilling its duties pursuant to subsection (1):

(a) provide adequate and reliable electricity supply service at the lowest long-term total cost;

(b) conduct an efficient electricity supply resource planning and procurement process that evaluates the

full range of cost-effective electricity supply and demand-side management options;

(c) identify and cost-effectively manage and mitigate risks related to its obligation to provide electricity supply service;

(d) use open, fair, and competitive procurement processes whenever possible; and

(e) provide electricity supply service and related services at just and reasonable rates.

(3) By March 31, 2008, the commission shall adopt rules that guide the electricity supply resource planning and procurement processes used by the public utility and facilitate the achievement of the objectives in subsection (2) by the public utility. The rules must establish:

(a) goals, objectives, and guidelines that are consistent with the objectives in subsection (2) for:

(i) planning for future electricity supply resource needs;

(ii) managing the portfolio of electricity supply resources; and

(iii) procuring new electricity supply resources;

(b) standards for the evaluation by the commission of the reasonableness of a power ~~supply~~ purchase agreement proposed by the public utility; and

(c) minimum filing requirements for an application by the public utility for approval of an electricity supply resource."

Section 94. Section 69-8-421, MCA, is amended to read:

"69-8-421. Approval of electricity supply resources. (1) A public utility that removed its generation assets from its rate base pursuant to this chapter prior to October 1, 2007, may apply to the commission for approval of an electricity supply resource that is not yet procured.

(2) Within 45 days of the public utility's submission of an application for approval, the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements. If the commission determines that the application is inadequate, it shall explain the deficiencies.

(3) The commission shall issue an order within 180 days of receipt of an adequate application for approval of a power purchase agreement from an existing generating resource unless it determines that extraordinary circumstances require additional time.

(4) (a) Except as provided in subsections (4)(b) through (4)(d), the commission shall issue an order within 270 days of receipt of an adequate application for approval of a lease, an acquisition of an equity interest

in a new or existing plant or equipment used to generate electricity, or a power purchase agreement for which approval would result in construction of a new electric generating resource. The commission may extend the time limit up to an additional 90 days if it determines that extraordinary circumstances require it.

(b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation resource or a modification to an existing resource, the commission shall hold the public hearing on the application for approval at least 30 days after the issuance of the final air quality permit.

(c) If a final air quality permit is not issued within the time limit pursuant to subsection (4)(a), the commission shall extend the time limit in order to comply with subsection (4)(b).

(d) The commission may extend the time limit for issuing an order for an additional 60 days following the hearing pursuant to subsection (4)(b).

(5) To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning and procurement activities related to a potential resource procurement prior to the public utility's submission of an application for approval.

(6) (a) The commission may approve or deny, in whole or in part, an application for approval of an electricity supply resource.

(b) The commission may consider all relevant information known up to the time that the administrative record in the proceeding is closed in the evaluation of an application for approval.

(c) A commission order granting approval of an application must include the following findings:

(i) approval, in whole or in part, is in the public interest; and

(ii) procurement of the electricity supply resource is consistent with the requirements in 69-3-201, the objectives in 69-8-419, and commission rules.

(d) The commission order may include a provision for allowable generation assets cost of service when the utility has filed an application for the lease or acquisition of an equity interest in a plant or equipment used to generate electricity.

(e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment that is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by natural or synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets. Expenditures required for cost-effective carbon offsets pursuant to this subsection (6)(e) are fully recoverable in rates. By March 31, 2008, the commission shall adopt rules for the implementation of this subsection (6)(e).

(f) The commission order may include other findings that the commission determines are necessary.

(g) A commission order that denies approval must describe why the findings required in subsection (6)(c) could not be reached.

(7) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order containing the findings required under subsection (6)(c), the commission may not subsequently disallow the recovery of costs related to the approved electricity supply resource based on contrary findings.

(8) Until the state or federal government has adopted uniformly applicable statewide standards for the capture and sequestration of carbon dioxide, the commission may not approve an application for the acquisition of an equity interest or lease in a facility or equipment used to generate electricity that is primarily fueled by coal and that is constructed after January 1, 2007, unless the facility or equipment captures and sequesters a minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a facility or equipment may be sequestered offsite from the facility or equipment.

(9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into the manner in which the public utility has managed, dispatched, operated, or maintained any resource or managed any power ~~supply~~ purchase agreement as part of its overall resource portfolio. The commission may subsequently disallow rate recovery for the costs that result from the failure of a public utility to reasonably manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with 69-3-201, 69-8-419, and commission rules.

(10) The commission may engage independent engineering, financial, and management consultants or advisory services to evaluate a public utility's electricity supply resource procurement plans and proposed electricity supply resources. The consultants must have demonstrated knowledge and experience with electricity supply procurement and resource portfolio management, modeling, risk management, and engineering practices. The commission shall charge a fee to the public utility to pay for the costs of consultants or advisory services. These costs are recoverable in rates.

(11) By March 31, 2008, the commission shall adopt rules prescribing minimum filing requirements for applications filed pursuant to this part."

Section 95. Section 70-32-106, MCA, is amended to read:

"70-32-106. Contents of declaration. ~~The~~ Subject to 70-32-216, the declaration of homestead must

contain a statement that the person making it is residing on the premises and claims them as a homestead and a description of the premises."

Section 96. Section 71-1-212, MCA, is amended to read:

"71-1-212. Penalties for failure to give certificate of discharge or release after full performance. After the full performance of the conditions of a mortgage and whether before or after a breach of the mortgage, a mortgagee or the personal representative or assignee of the mortgagee who refuses or neglects to execute, acknowledge, and deliver to the mortgagor a certificate of discharge or release of the mortgage within 90 days after a request for one is liable to the mortgagor or the mortgagor's heirs or assigns in the sum of $500 and all actual damages resulting from the neglect or refusal."

Section 97. Section 72-3-606, MCA, is amended to read:

"72-3-606. Possession and protection of estate. (1) Except as otherwise provided by a decedent's will ~~and subject to the provisions of chapter 12, part 7~~, ~~every~~ a personal representative has a right to and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled ~~thereto~~ to the property unless or until, in the judgment of the personal representative, possession of the property by ~~him~~ the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession ~~thereof~~ of the property, that the possession of the property by the personal representative is necessary for purposes of administration.

(2) The personal representative shall pay taxes on and take all steps reasonably necessary for the management, protection, and preservation of the estate in ~~his~~ the personal representative's possession. ~~He~~ The personal representative may maintain an action to recover possession of property or to determine the title ~~thereto~~ to the property."

Section 98. Section 75-1-110, MCA, is amended to read:

"75-1-110. Environmental rehabilitation and response account. (1) There is an environmental rehabilitation and response account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-10-1223, 82-4-311, and 82-4-424 and other funds or contributions designated for deposit to the account;

(b) unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311, and 82-4-424~~, and 82-4-426~~; and

(c) interest earned on the account.

(3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation and revegetation of land affected by mining activities, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;

(b) reclamation and revegetation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(c) remediation of sites containing hazardous wastes or hazardous substances for which the department may not recover costs from a legally responsible party; or

(d) response to an imminent threat of substantial harm to the environment, to public health, or to public safety for which no funding or insufficient funding is available pursuant to 75-1-1101.

(4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."

Section 99. Section 75-1-220, MCA, is amended to read:

"75-1-220. Definitions. For the purposes of this part, the following definitions apply:

(1) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in 2-15-3402;

(c) department of transportation, the transportation commission, as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas

conservation, as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, as provided for in 2-15-3102.

(2) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(3) "Cumulative impacts" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(4) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment as required under this part.

(5) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through ~~328~~ 329).

(6) "Public scoping process" means any process to determine the scope of an environmental review."

Section 100. 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 to that section, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or ~~7661~~ 7661a; or

(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or ~~7661~~ 7661a;

(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, 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 101. Section 75-2-211, MCA, is amended to read:

"75-2-211. 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) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section, 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.

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of

producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(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 75-1-205(4) and 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:

(i) within 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) within 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, within 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~~ 7661a, 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, except as provided in

subsection (14).

(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~~ 7661a, 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) 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 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) 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. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. 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 until 15 days have elapsed from the date of the decision.

(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) 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~~ 7661a;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) The board shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality permits not subject to subsection (12).

(14) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

(a) the period as provided in subsection (13) in which the public may submit comments on draft air quality permits not subject to subsection (12); and

(b) the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).

(15) (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 (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 102. Section 75-10-101, MCA, is amended to read:

"75-10-101. Purpose. The purpose of this part is to encourage the good management of solid waste and the conservation of natural resources through the promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes ~~where~~ when economically feasible and to provide a coordinated state solid waste management and resource recovery plan."

Section 103. Section 75-10-102, MCA, is amended to read:

"75-10-102. Public policies. (1) To implement this part, the following are declared to be public policies of this state:

(a) Maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of the natural environment.

(b) Solid waste management systems ~~shall~~ must be developed, financed, planned, designed, constructed, and operated for the benefit of the people of this state.

(c) Private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems.

(d) Local governments shall retain primary responsibility for adequate solid waste management with the state preserving those functions necessary to ~~assure~~ ensure effective solid waste management systems throughout the state.

(e) Costs for the management and regulation of solid waste management systems should be charged to those persons generating solid waste in order to encourage the reduction of the solid waste stream.

(f) Encouragement and support should be given to individuals and municipalities to separate solid waste at its source in order to maximize the value of ~~such~~ those wastes for reuse.

(g) The state shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems.

(h) Actions and activities performed or carried out by persons and their contractors in accordance with this part ~~shall~~ must be in conformity with the state solid waste management and resource recovery plan.

(i) When licensing a solid waste management system, the department shall consult with units of local government that have jurisdiction over the area encompassing the proposed system.

(2) This part is in addition and supplemental to any other law providing for the financing of a solid waste management system and does not amend or repeal any other law."

Section 104. Section 75-10-103, MCA, is amended to read:

"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Container site" means a solid waste management facility that:

(a) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or

(b) receives waste from waste collection vehicles and:

(i) receives no more than 3,000 tons of waste each year;

(ii) has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and

(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Local government" means a county, incorporated city or town, or solid waste management district organized under the laws of this state.

(5) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

(6) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(7) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable

byproducts.

(8) "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

(9) "State solid waste management and resource recovery plan" means the statewide plan formulated by the department as authorized by this part."

Section 105. Section 75-10-112, MCA, is amended to read:

"75-10-112. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste management and resource recovery plan and propose modifications to the state's solid waste management and resource recovery plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) subject to 15-10-420, finance a solid waste management system through the assessment of a tax as authorized by state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local government plans, designs, or constructs for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of a local government;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites."

Section 106. Section 75-10-1007, MCA, is amended to read:

"75-10-1007. Criminal penalty. A person who violates this part or a rule adopted pursuant to this part

is guilty of a misdemeanor. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this ~~section~~ part or a rule adopted under this part."

Section 107. Section 76-3-511, MCA, is amended to read:

"76-3-511. Local regulations no more stringent than state regulations or guidelines. (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a regulation under 76-3-501 or ~~76-3-504(1)(f)(iii)~~ 76-3-504(1)(g)(iii) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a regulation to implement 76-3-501 or ~~76-3-504(1)(f)(iii)~~ 76-3-504(1)(g)(iii) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the regulation. If the governing body determines that the regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the regulation to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines

existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body regulation."

Section 108. Section 76-7-204, MCA, is amended to read:

"76-7-204. Environmental control easement conveyances. (1) The designated grantee of an environmental control easement granted under this chapter is one or more of the following entities:

(a) a federal public entity;

(b) the state of Montana, acting by and through the department or any other state agency;

(c) any other public body having jurisdiction over the environmental control site; or

(d) a qualified private organization.

(2) A grantee's acceptance of the easement interest and related obligations must be evidenced by the grantee's execution of the instrument creating the environmental control easement.

(3) Prior to or contemporaneously with the conveyance of an environmental control easement to a designated grantee, the environmental control site owner shall:

(a) obtain documents demonstrating that every person or entity holding an interest in the environmental control site or any part of the site, including without limitation each mortgagee, lienholder, lessee, and encumbrancer, irrevocably subordinates the entity's interest to the environmental control easement;

(b) record the documents required under subsection (3)(a) in the appropriate county; and

(c) submit those documents required under subsection (3)(a) to the designated grantee.

(4) An environmental control easement may not be separated from the land and survives foreclosure of a mortgage, lien, or other encumbrance, as well as tax lien sales and the issuance of a tax deed."

Section 109. Section 76-13-123, MCA, is amended to read:

"76-13-123. Failure to extinguish recreational fire. A person who fails to extinguish a recreational fire that the person has set or ignited or in which the person has been left in charge or who negligently allows the fire to spread from the ~~plot~~ area described in 76-13-121 is subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103."

Section 110. Section 76-13-211, MCA, is amended to read:

"76-13-211. Amount due for protection treated as lien. (1) Whenever the department provides wildland fire protection for any wildland or timber not protected by the owner of the wildland or timber as required by part 1 or this part, the amount due for the protection is a lien upon the wildland or timber that continues until the amount due is paid.

(2) The lien has the same force, effect, and priority as general tax liens under the laws of the state and is subject and inferior only to tax liens on the ~~lands~~ wildland or timber. The county attorney of the county in which the ~~land~~ wildland or timber is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department shall institute an action against the landowner in the name of the state in any district or justice court having jurisdiction to recover the debt. The state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace.

(3) The remedies provided by this section are cumulative and do not affect the other provisions of part 1 or this part for the payment and collection of amounts due to the department."

Section 111. Section 76-13-402, MCA, is amended to read:

"76-13-402. Basis for management of fire hazards. The fire hazard reduction or management referred to in this part ~~shall~~ must be carried on by the department in keeping with modern and progressive forest practices and effective ~~forest~~ fire protection and may include but is not limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard."

Section 112. Section 76-13-405, MCA, is amended to read:

"76-13-405. Contracts with forest fire protection agencies. The department is authorized to enter into contracts with ~~forest~~ fire protection agencies, including agencies of the United States, for fire hazard reduction or management when in its opinion the work can best be accomplished in that manner."

Section 113. Section 76-13-406, MCA, is amended to read:

"76-13-406. Limitation on liability. The department and other recognized ~~forest~~ fire protection agencies, including any agency of the United States, with which the department has entered into an agreement for fire hazard reduction or management as provided in 76-13-405 and any officer, official, or employee of the

department or other recognized ~~forest~~ fire protection agency is not liable for any damage to the land, product, improvement, or other things of value upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of this part, the rules adopted under 76-13-403, and the fire hazard reduction agreement when reasonable care and caution has been used and the work is being or has been performed in compliance with the rules provided in 76-13-403."

Section 114. Section 76-15-408, MCA, is amended to read:

"76-15-408. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the ~~renewable resource fund~~ natural resources projects state special revenue account. The department shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts."

Section 115. Section 77-2-362, MCA, is amended to read:

"77-2-362. State land bank fund -- statutory appropriation -- rules. (1) There is a state land bank fund. The proceeds from the sale of state trust land authorized by 77-2-361 through 77-2-367 must be deposited into the state land bank fund. The purpose of the state land bank fund is to temporarily hold proceeds from the sale of trust land pending the purchase of other land, easements, or improvements for the benefit of the beneficiaries of the respective trusts. A separate record of the proceeds received from the sale of trust land for each of the respective trusts must be maintained. Proceeds from the sale of lands that are part of a trust land grant may be used only to purchase land for the same trust.

(2) (a) Proceeds deposited in the state land bank fund, except earnings on those proceeds, are statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in 77-2-361 through 77-2-367. All earnings on the proceeds deposited in the state land bank fund are subject to the provisions of Article X, sections 5 and 10, of the Montana constitution.

(b) Except as provided in subsection (2)(c), up to 10% of the proceeds in the state land bank fund may be used by the department to fund the transactional costs of buying, selling, appraising, or marketing real property. Transactional costs may include realtor's fees, title reports, title insurance, legal fees, and other costs that may be necessary to complete a conveyance of real property.

(c) Proceeds from the sale of lands held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308,

and the Morrill Act of 1890, 7 U.S.C. 321 through ~~328~~ 329, may not be used for any transactional costs or trust administration purposes for those lands.

(d) The department may hold proceeds from the sale of state land in the state land bank fund for a period not to exceed 10 years after the effective date of each sale. If, by the end of the 10th year, the proceeds from the subject land sale have not been encumbered to purchase other lands, easements, or improvements within the state, the proceeds from that sale must be deposited in the public school fund or in the permanent fund of the respective trust as required by law, along with any earnings on the proceeds from the land sale, unless the time period is extended by the legislature.

(3) The board shall adopt rules providing for the implementation and administration of the state land bank fund, purchases, and sales."

Section 116. Section 85-1-619, MCA, is amended to read:

"85-1-619. Debt service fund -- pledge and administration of sufficient balance. (1) The legislature may levy, impose, assess, and pledge and appropriate to the renewable resource loan debt service fund any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other ~~revenues~~ revenue pledged and appropriated to the renewable resource loan debt service fund, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that fund and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all bonds ~~shall be and remain~~ is and remains irrevocable until they are fully paid.

(2) Money in the renewable resource loan debt service fund must be used to pay interest, principal, and redemption premiums when due and payable with respect to renewable resource bonds, and for bonds issued prior to 1985, to accumulate a reserve for the further security of the payments.

(3) After the reserve provided for in subsection (2) for bonds issued prior to 1985 has been accumulated in the renewable resource loan debt service fund, money at any time received in the renewable resource loan debt service fund in excess of that amount must be transferred by the treasurer to the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account."

Section 117. Section 85-2-344, MCA, is amended to read:

"85-2-344. Bitterroot River subbasin temporary closure -- definitions -- exceptions. (1) Unless the context requires otherwise, in this section, the following definitions apply:

(a) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(b) "Bitterroot River basin" means the drainage area of the Bitterroot River and its tributaries above the confluence of the Bitterroot River and Clark Fork of the Columbia River and designated as "Basin 76H".

(c) "Bitterroot River subbasin" means one of the following hydrologically related portions of the Bitterroot River basin:

(i) the mainstem subbasin, designated as "Subbasin 76HA";

(ii) the north end subbasin, designated as "Subbasin 76HB";

(iii) the east side subbasin, designated as "Subbasin 76HC";

(iv) the southeast subbasin, designated as "Subbasin 76HD";

(v) the south end subbasin, designated as "Subbasin 76HE";

(vi) the southwest subbasin, designated as "Subbasin 76HF";

(vii) the west central subbasin, designated as "Subbasin 76HG"; or

(viii) the northwest subbasin, designated as "Subbasin 76HH".

(2) As provided in 85-2-319, the department may not grant an application for a permit to appropriate water or for a state water reservation within a Bitterroot River subbasin until the closure for the basin is terminated pursuant to subsection ~~(3)~~ (5) of this section, except for:

(a) an application for a permit to appropriate ground water if the applicant complies with the provisions of 85-2-360;

(b) an application for a permit to appropriate water for use of surface water by or for a municipality;

(c) temporary emergency appropriations pursuant to 85-2-113(3);

(d) an application submitted pursuant to 85-20-1401, Article VI;

(e) an application to store water during high spring flow in an impoundment with a capacity of 50 acre-feet or more; or

(f) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), or (2)(f).

(5) Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and administrable decree as provided in 85-2-406(4)."

Section 118. Section 87-1-272, MCA, is amended to read:

"87-1-272. (Temporary) Future fisheries improvement program -- funding priority -- reports required. (1) In order to enhance future fisheries through natural reproduction, the department shall establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for the rivers, streams, and lakes of Montana's fisheries.

(2) ~~The department shall when~~ When projects are suggested by the future fisheries review panel, the department shall, through a public hearing process and with the approval of the commission, prioritize projects that have been recommended by the review panel to be funded. Emphasis must be given to projects that enhance the historic habitat of native fish species. The department shall fund and implement the program regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.

(3) The department shall work in cooperation with private landowners, conservation districts, irrigation

districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any department employee who is employed under this section to facilitate contact with landowners must have experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and grants, matching grants, and private donations to accomplish program purposes. The department may use contracted services:

(a) for negotiations with landowners, local officials, citizens, and others;

(b) for coordination with other agencies that may be involved in projects conducted under this section; and

(c) to perform and supervise project work.

(4) Funds expended under this section may be used only for projects for the protection of the fisheries resource that have been identified by the review panel established in 87-1-273 and approved by the commission and may not be used for the acquisition of any interest in land.

(5) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 12 months and post a copy of the report on a state electronic access system to ensure public access to the report.

(b) The department shall also present a detailed report to the senate fish and game committee, the house fish, wildlife, and parks committee, and the natural resources and commerce joint appropriations subcommittee of each regular session of the legislature on the progress of the future fisheries improvement program and shall include specific information regarding progress and projects related to the restoration of native Montana fish species. The legislative report must include the department's program activities and expenses since the last report and the project schedules and anticipated expenses for the ensuing 10 years' implementation of the future fisheries improvement program. The department shall include a listing of the funding source for each project funded since the last report and shall identify any project that involves stream remediation from mining activities. All financial information presented in the legislative report must conform to the requirements of the ~~state~~ statewide accounting, budgeting, and human ~~resources~~ resource system.

(c) In order to implement 87-1-273 and this section, the department may expend revenue from the future fisheries improvement program for up to two additional full-time employees. (Terminates July 1, 2009--sec. 3, Ch. 183, L. 2007.)

87-1-272. (Effective July 1, 2009) Future fisheries improvement program -- funding priority --

reports required. (1) In order to enhance future fisheries through natural reproduction, the department shall establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for the rivers, streams, and lakes of Montana's fisheries.

(2) ~~The department shall by April 1, 1996, and thereafter when~~ When projects are suggested by the future fisheries review panel, the department shall, through a public hearing process and with the approval of the commission, prioritize projects that have been recommended by the review panel to be funded. Emphasis must be given to projects that enhance the historic habitat of native fish species. The department shall fund and implement the program regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.

(3) The department shall work in cooperation with private landowners, conservation districts, irrigation districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any department employee who is employed under this section to facilitate contact with landowners must have experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and grants, matching grants, and private donations to accomplish program purposes. The department may use contracted services:

(a) for negotiations with landowners, local officials, citizens, and others;

(b) for coordination with other agencies that may be involved in projects conducted under this section; and

(c) to perform and supervise project work.

(4) Funds expended under this section may be used only for projects for the protection of the fisheries resource that have been identified by the review panel established in 87-1-273 and approved by the commission and may not be used for the acquisition of any interest in land.

(5) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 12 months and post a copy of the report on a state electronic access system to ensure public

access to the report.

(b) The department shall also present a detailed report to each regular session of the legislature on the progress of the future fisheries improvement program. The legislative report must include the department's program activities and expenses since the last report and the project schedules and anticipated expenses for the ensuing 10 years' implementation of the future fisheries improvement program.

(c) In order to implement 87-1-273 and this section, the department may expend revenue from the future fisheries improvement program for up to two additional full-time employees."

Section 119. Section 87-1-504, MCA, is amended to read:

"87-1-504. Protection of private property -- duty of wardens. It is the duty of wardens ~~(state conservation officers)~~ to enforce the provisions of 45-6-101, 45-6-203, 75-10-212(2), 77-1-801, 77-1-806, and rules adopted under 77-1-804 on private and state lands being used for hunting and fishing ~~and to act as ex officio firewardens as provided by 77-5-104~~."

Section 120. Section 87-1-505, MCA, is amended to read:

"87-1-505. Warden's power in protection of private property. Wardens ~~(state conservation officers) shall~~ have the power of peace officers in the enforcement of 45-6-101, 45-6-203, and 75-10-212(2)."

Section 121. Section 87-2-201, MCA, is amended to read:

"87-2-201. Wildlife conservation license prerequisite for other licenses. Except as provided in ~~87-2-803(5)~~ 87-2-803(6), it is unlawful for any person ~~or persons~~ to purchase ~~any~~ a hunting, fishing, or trapping license without first having obtained a wildlife conservation license as ~~hereinafter~~ provided in this part."

Section 122. Section 87-2-514, MCA, is amended to read:

"87-2-514. Nonresident child of resident allowed to purchase nonresident licenses at reduced cost. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is the natural or adopted child of a resident, as defined in 87-2-102, and who meets the qualifications of subsection (3) may purchase a Class B nonresident fishing license, a Class B-1 nonresident upland game bird license, and a Class B-7 nonresident deer A tag at the reduced cost specified in subsection (2) and may purchase

a Class B-15 nonresident child's elk license as provided in 87-2-515. This section does not allow a nonresident child of a resident to purchase nonresident combination licenses at a reduced price.

(2) The fee for a nonresident license purchased pursuant to subsection (1) is twice the amount charged for an equivalent resident license. The nonresident child shall also purchase a nonresident wildlife conservation license as prescribed in 87-2-202 and pay the nonresident hunting access enhancement fee in 87-2-202(3)(d) if the nonresident child purchases a hunting license.

(3) To qualify for a license pursuant to subsection (1), a nonresident child of a resident shall apply at any department regional office or at the department's state office in Helena and present proof of the following:

(a) a birth certificate verifying the applicant's birth in Montana;

(b) a high school diploma from a Montana public, private, or home school or certified verification that the applicant has passed the general ~~education~~ educational development test in Montana; and

(c) proof that the applicant has a natural or adoptive parent who is a current Montana resident, as defined in 87-2-102.

(4) A qualified nonresident child of a resident may purchase licenses pursuant to subsection (1) for up to 6 license years after receiving a diploma or passing the general ~~education~~ educational development test as provided in subsection (3)(b).

(5) A nonresident child of a resident who has been issued a hunting license pursuant to this section is not eligible to apply for or be issued any nonresident special permit.

(6) A nonresident child of a resident who has been issued a hunting license pursuant to this section must be accompanied by a licensed resident family member while hunting in the field."

Section 123. Repealer. Sections 15-7-134, 16-1-405, and 20-9-631, MCA, are repealed.

Section 124. Directions to code commissioner. The code commissioner is directed to implement 1-11-102(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 61st legislature.

- END -

I hereby certify that the within bill,

SB 0007, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day

of _____, 2009.

Speaker of the House

Signed this _____ day

of _____, 2009.

SENATE BILL NO. 7

INTRODUCED BY K. GEBHARDT

BY REQUEST OF THE CODE COMMISSIONER

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 61ST LEGISLATURE; AMENDING SECTIONS 2-4-102, 2-5-103, 2-15-1781, 2-15-3113, 7-2-2723, 7-2-2743, 7-3-121, 7-3-122, 7-3-124, 7-3-154, 7-4-2505, 7-13-2527, 7-32-303, 10-3-1304, 10-4-101, 13-15-105, 13-15-107, 13-27-316, 15-1-121, 15-6-138, 15-6-192, 15-6-221, 15-7-111, 15-8-205, 15-8-301, 15-10-420, 15-16-402, 15-17-323, 15-17-911, 15-18-411, 15-18-413, 15-24-301, 15-24-2403, 15-30-140, 15-31-121, 16-1-306, 17-7-111, 17-7-138, 18-2-401, 18-5-605, 19-3-2121, 19-21-203, 20-7-328, 20-7-329, 20-7-330, 20-9-501, 20-9-707, 22-2-107, 23-5-119, 27-20-102, 30-10-324, 31-2-106, 33-1-111, 37-17-102, 39-51-403, 39-51-503, 39-71-2352, 39-73-104, 41-2-103, 41-3-205, 41-5-103, 41-5-322, 41-5-331, 41-5-1201, 41-5-1202, 41-5-1203, 41-5-1204, 41-5-1205, 41-5-1301, 41-5-1302, 41-5-1304, 41-5-1401, 41-5-1432, 41-5-1501, 41-5-1511, 41-5-1512, 41-5-1701, 41-5-1703, 41-5-1706, 44-1-303, 45-6-312, 46-23-508, 50-5-101, 50-6-503, 50-19-101, 52-3-813, 53-6-1201, 53-19-309, 53-20-125, 53-20-128, 53-20-133, 61-4-128, 69-8-419, 69-8-421, 70-32-106, 71-1-212, 72-3-606, 75-1-110, 75-1-220, 75-2-111, 75-2-211, 75-10-101, 75-10-102, 75-10-103, 75-10-112, 75-10-1007, 76-3-511, 76-7-204, 76-13-123, 76-13-211, 76-13-402, 76-13-405, 76-13-406, 76-15-408, 77-2-362, 85-1-619, 85-2-344, 87-1-272, 87-1-504, 87-1-505, 87-2-201, AND 87-2-514, MCA; AND REPEALING SECTIONS 15-7-134, 16-1-405, AND 20-9-631, MCA.